Report of the
Commission of Inquiry into Residential Tenancies

Volume 1

Stuart Thom
Commissioner

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Commission of Inquiry
into
Residential Tenancies
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Ontario

Stuart Thom
Commissioner

Donald Jack
Legal Counsel

John Todd
Research Director

Thelma Hershorn
Administrator

Commission of Inquiry into
Residential Tenancies

416/963-2533

180 Dundas St. W.
22nd Floor
Toronto, Ontario
M5G 1Z8

August 16, 1984.

The Honourable Robert G. Elgie, M.D.
Minister of Consumer and Commercial Relations
9th Floor, 555 Yonge Street
Toronto, Ontario
M7A 2H6

Dear Mr. Minister:

I am pleased to present to you for submission to the Lieutenant Governor in Council my Report on the operation of rent regulation in Ontario, which began under *The Residential Premises Review Act, 1975 (2nd Sess.)* and has continued under the *Residential Tenancies Act* and the *Residential Complexes Financing Costs Restraint Act, 1982*.

Yours sincerely,

Stuart Thom
Commissioner

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Order in Council

The following is the text of Order in Council #3092/82 as amended by Order in Council #2504/83, approved by His Honour the Lieutenant Governor on the recommendation of the Minister of Consumer and Commercial Relations.

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that

Pursuant to the provisions of the *Public Inquiries Act,* R.S.O. 1980, Chapter 411, Mr. STUART D. THOM, Q.C., be appointed as a Commissioner,

1. to examine, study and inquire into the laws of Ontario, including the statutes and regulations passed thereunder affecting residential tenancies in Ontario for the purpose of determining,
   (a) the equity of the current system of rent review, having regard for the rights and interests of both the landlord and the tenant;
   (b) the effect of rent review on the level of rental rates and the supply of residential accommodation in the Province;
   (c) whether a more expeditious procedure should be applied to the review and decision-making process of the Residential Tenancy Commission in view of the issues being raised, the rights of appeal and the need for timely decisions;

(d) the appropriate amendments required in the *Residential Tenancies Act*, having regard for the decision of the Supreme Court of Canada in respect thereto;

(e) the advisability of integrating the *Landlord and Tenant Act* with the provisions for rent review as was contemplated by the *Residential Tenancies Act* prior to the decision of the Supreme Court; and

(f) any other changes in such laws, procedures and processes necessary and desirable to provide for the fair and equitable treatment of landlords and tenants under a system of rent review;

2. to recommend such changes in the laws, procedures and processes as in the opinion of the Commissioner are necessary and desirable to provide for the fair and equitable treatment of landlords and tenants under a system of rent review; and

3. to recommend what measures, in addition to rent review, the Province of Ontario might take to assist in providing rental accommodation at fair rents for living accommodations to which the *Residential Tenancies Act* applies.

It is further ordered that all Government Ministries, Boards, Agencies and Commissions, shall assist Mr. Thom to the fullest extent in order that he may carry out his duties and functions, and that he shall have authority to engage such counsel, expert technical advisors and other staff as he deems proper at rates of remuneration and reimbursement to be approved by the Management Board of Cabinet, and that the Ministry of the Attorney General will be responsible for providing administrative support to the Inquiry.

Commission Staff

Commissioner
Stuart Thom

Legal Counsel	Donald H. Jack
Assistant Counsel	Daniel MacDonald
Research Director	John Todd
Administrator	Thelma Hershorn
Editor	Freya Godard
Associate Editor	Lenore d'Anjou
Research Staff	Eric Adams Pearl Ing John Pringle
Research Assistants	Mary Jane Park Janet Ortved Marja Gates Walter Wilmot Peter Quance
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Word Processor	Carroll Brooks
Computer Programmer	Miriam Brown
Secretarial Staff	Roberta Baird Sally Bennett Vergenne Glaser Oylunn Hums Elaine Lee
Receptionist	Connie Hurley

Counsel and Agents Appearing before the Inquiry

Kathryn Barnard	Social Planning Council of Ottawa-Carleton
Jack deKlerk	New Democratic Party
John W. Dickie	Federation of Ottawa-Carleton Tenants Associations
Gail Edmunds	University City Tenants Association
Richard A. Fink	Bathurst-Eglinton Tenants Association
Issie Fishman	Karel Morevac
Aaron A. Hermant, Q.C. Gerald L. Gross Karen Cohl Louise A. Stratford	Residential Tenancy Commission
Diana Hunt Robert Robinson Kenneth Hale Mary Hogan Sean Goetz-Gadon Dale Martin	Community Legal Aid Services Program Metro Tenants Legal Services Flemingdon Community Legal Services Tenant Hotline Parkdale Community Legal Services Scarborough Community Legal Services Riverdale Socio-Legal Services East Toronto Community Legal Services Central Toronto Community Legal Services Jane-Finch Community Services Mississauga Community Legal Services Inc. Downtown Legal Services Federation of Metropolitan Toronto Tenants' Associations
Jonathan Krehm William Krehm	O'Shanter Development Company

Julius Melnitzer Mavis Butkus Michael Thompson Anthony Steele	Committee of Concern for Rental Housing
Jan Schwartz	Multiple Dwelling Standards Association
John Strung	Pauline Shapiro
David Thornley	Social Planning Council of Metropolitan Toronto

Preface

Rent regulation became a policy of the provincial government in Ontario in 1975.[1] *The Residential Premises Rent Review Act, 1975 (2nd Session)*, c. 12, S.O. 1975 (2nd Session), which will be referred to in this Report as the 1975 Act, was introduced into the legislature in October 1975. It became law in November of that year but was given retroactive effect to July 29, 1975.

Ontario did not act alone. In October of 1974, British Columbia had included rent control provisions in its *Landlord and Tenant Act* (rents were decontrolled in 1984). The Rent Review Act was passed in Prince Edward Island by 1975 (and is still in effect with a 3 per cent ceiling.) In December of that year, the *Temporary Rent Regulation Measures Act* came into effect in Alberta (rents were decontrolled in 1980) and *The Rent Review Act* was passed in Nova Scotia (and is still in effect). In January of 1976, Saskatchewan passed the *Residential Tenancies Act*, which made provision for rent control. (Rents are now decontrolled except for a tenant-initiated review procedure.) In February 1976, New Brunswick proclaimed the *Residential*

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[1] Rent regulation has existed in Canada before. In 1941, rent regulation was introduced across Canada as part of the federal wartime measures. On September 11, 1940, an Order in Council gave specific powers to the Wartime Prices and Trade Board to regulate the rents of residential accommodation. The Board was to determine the maximum amount of rent that could be charged and establish regulations regarding landlord-tenant relations. When the federal government abandoned the control of rents as of April 30, 1951, it was taken over by the provinces. In Ontario, the Ontario Rentals Administration was established in 1951 under the jurisdiction of the Minister of Travel and Publicity. A policy of gradual decontrol was begun in 1952, and on March 2, 1954, all rent control by the Province was discontinued. Rent controls were also introduced temporarily during World War I by the federal government.

Rent Review Act in force (rent control ended in 1979 and was reintroduced in 1983); and in May 1976 *The Rent Stabilization Act* was passed in Manitoba (it now has a 9 per cent ceiling). Quebec and Newfoundland both have systems of rent regulation that predate those of the other eight provinces.

Rent regulation of various forms is also common outside Canada. Some of the jurisdictions with rent regulation are: France since 1914; Great Britain since 1915; Germany since World War I (now rent arbitration); Hong Kong since 1921 (except for 1927 to 1938); the Netherlands since 1940; Sweden since 1942 (now rent arbitration); several Australian states (South Australia, New South Wales, and Victoria) since 1948; Denmark since 1967; and several United States jurisdictions, including New York City since 1943, Connecticut since 1969, Los Angeles, San Francisco, and Santa Monica in California since 1979, Massachusetts since 1970, and District of Columbia since 1973.

In 1975, rent regulation was not regarded by the Government of Ontario as a permanent policy. By its own terms the 1975 Act stood to be repealed on December 31, 1978, but as that day approached, its life was extended in short spurts until November 30, 1979. On June 22, 1979, the legislature passed *The Residential Tenancies Act, 1979*, c. 78, S.O. 1979. It is now chapter 452 of the Revised Statutes of Ontario, 1980 and is entitled the *Residential Tenancies Act*. In this Report, however, it will be referred to as the 1979 Act. Certain provisions of the 1979 Act were either varied or suspended by the *Residential Complexes Financing Costs Restraint Act, 1982*, c. 59, S.O. 1982, which came into force December 22, 1982. In this Report that legislation is referred to as the 1982 Interim Act. By its own terms that Act was to have been repealed on the 30th day of December 1983, but by c. 69 S.O. 1983, enacted December 2, 1983, the repeal date became December 31, 1984.

Rent regulation in Ontario is now entering its tenth year, and there is no indication of when it will end. This Inquiry is being conducted, and this Report has been written, on the assumption that rent regulation will continue in Ontario.

This Inquiry into the operation of rent regulation in Ontario was announced by the Minister of Consumer and Commercial Relations in a statement to the legislature on November 16, 1982, in which he said:

> I wish to announce that [a commissioner] will be appointed to conduct an Inquiry under the Public Inquiries Act. The Commissioner will have broad terms of reference to look into the application of the existing laws to the regulation of rents and to make recommendations on changes that will eliminate or reduce any of the

> inequities that have been found in the present system. Once again, I would emphasize that the purpose of this review is not to find ways to advantage either landlords or tenants, but rather to come up with the most equitable set of rules for the control of rents and related problems as is possible.

The Inquiry was established on November 26, 1982, by Order in Council. The full name of the Inquiry is Commission of Inquiry into Residential Tenancies, but since that name can be confused with the Residential Tenancy Commission constituted by the 1979 Act, the Commission of Inquiry is referred to throughout this Report as the Inquiry and the Residential Tenancy Commission is referred to as the Commission.

The Order in Council confirmed the government's policy of continuing some form of rent regulation, and, as already mentioned, the Inquiry has proceeded on that basis. The terms of reference in the Order in Council, when read in the light of the Minister's statement to the legislature, were interpreted as assigning two tasks to the Inquiry. One was to examine the operation of the existing system of rent regulation under the current legislation and to offer recommendations for changes that might be considered "necessary and desirable to provide for the fair and equitable treatment of landlords and tenants." In pursuing that objective, the Inquiry has given particular attention to changes that would render the current system more expeditious and effective. The other task was to consider whether there are other forms of rent regulation that would better "provide for the fair and equitable treatment of landlords and tenants." Associated with the latter injunction was a direction to recommend what measures in addition to rent review might be taken to "assist in providing rental accommodation at fair rents."

With the foregoing in mind, the work of the Inquiry was divided into two phases. The first phase is completed and is the subject of this Report. It dealt with the system of rent regulation begun under the 1975 Act and revised and continued under the 1979 Act as varied by the 1982 Interim Act. Evidence and submissions were presented by the Commission and by, and on behalf of, landlords and tenants and others interested in the operation of rent regulation during eighty days of public hearings held variously in Toronto, Ottawa, Sudbury, and London from February to September 1983.[2] The information acquired in this manner was supplemented by numerous memoranda, letters, and briefs from interested groups and citizens throughout the province. Comments and recommendations regarding the operation of rent regulation in Ontario constitute Chapters 1 to 13.

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[2] The names of the persons and associations that appeared before the Inquiry to give evidence or who submitted written material are found in Appendices H and I.

In 1982, during a crisis caused by the purchase and resale for large amounts of money of some 11,000 rental units located mainly in and about Toronto, the government enacted the 1982 Interim Act, whose full title is "An Act to Provide for an Interim Restraint on the Pass Through of Financing Cost in respect of Residential Complexes". The title describes the purpose of the legislation, although the Act also dealt with other matters involved in the rent review process. It was the government's intention when this legislation was enacted that it would give more deliberate consideration to statutory amendments after it received the Report of the Inquiry. The Inquiry did prepare a report containing comments and recommendations on the main items in the Act, but because the Inquiry's full report on rent regulation was not available at the time the Act would have been repealed on December 31, 1983, the life of the Act was extended for a year. The substance of the Inquiry's comments and recommendations on the 1982 Interim Act is included in this Report.

There are other matters that pertain to rent regulation but are not part of the day-to-day operation of the system. They include (i) the exemption level of $750 a month for controlled rental units, (ii) the part tenants' associations could play in the rent review process, and (iii) the position of boarding houses and lodging houses under rent regulation. In May 1984 the Inquiry held a further five days of hearings in Toronto to hear representations on those subjects. The resulting comment and recommendations are contained in Chapters 14 to 16.

When the Minister announced this Inquiry, his statement to the legislature on November 16, 1982, also referred to a rent registry:

> [an] area of particular concern to me is the absence of a registry of rents. So long as no one can adequately track the rent changes from tenant to tenant, it is extremely difficult to determine whether the 6% limit on rent increases made by a landlord alone, has been honoured. I would like the Commissioner to give early attention to steps that could be taken to permit the use of section 33 of the Residential Tenancies Act. This section provides for such a registry, but members may recall that it was not proclaimed as the enforcement provisions relating to it were affected by the decision of the Supreme Court of Canada on the validity of the Act.

The Inquiry has drawn up a proposal for rent schedules and a rent registry, which constitutes Chapter 17 of the Report.

The Inquiry was also directed by the Order in Council to study and report with regard to:

(d) the appropriate amendments required in the Residential Tenancies Act, having regard for the decision of the Supreme Court of Canada in respect thereto: [and]
(e) the advisability of integrating the Landlord and Tenant Act with the provisions for rent review as was contemplated by the Residential Tenancies Act prior to the decision of the Supreme Court.

The decision of the Supreme Court referred to by the Order in Council was on a reference brought before the Court of Appeal of Ontario to consider whether it was within the legislative authority of the Legislative Assembly of Ontario to empower the Commission to make orders evicting tenants or to require landlords and tenants to comply with obligations imposed under the 1979 Act. In February 1980, the Court of Appeal held that the provisions of the 1979 Act by which the Commission was authorized to make orders of the kind referred to above were *ultra vires* the legislature ("Reference re Residential Tenancies Act" 105 D.L.R. (3d) 193). The opinion of the Court of Appeal was appealed to the Supreme Court of Canada, and the appeal was dismissed in May 1981 (reported 123 D.L.R. (3d) 554). Both the courts gave lengthy written reasons. The outcome of the reference was that those parts of the 1979 Act dealing with landlord and tenant matters were not declared in force but other parts creating the Commission and providing for rent regulation were declared in force. The parts and sections of the 1979 Act that were declared in force are listed in Appendix A. Comments on where this has left the legislation and what might be done with it are contained in Chapter 18.

Concurrently with the proceedings under the first phase, the Inquiry has been developing its plans for the second phase. Because the second phase is concerned more with the abstract and theoretical aspects of rent regulation than with the operation of the present rent regulation system, it calls for research into matters such as the objectives of rent regulation and alternative forms of rent regulation. Studies of these matters have been contracted for and will be available to the public during the autumn of 1984. These studies together with material submitted by landlords and tenants will be the subject of public hearings commencing in October of 1984.

Acknowledgements

Throughout the Inquiry it has been my good fortune to have had the invaluable support and assistance of highly qualified people, each of whom has in his or her way made a positive beneficial contribution to the final result. I thank them most sincerely.

Thelma Hershorn brought to her task as Administrator unflagging energy in managing the Inquiry and great sensitivity in dealing with the officials of the Ministries who are involved in the mechanics of an operation such as this. It is timely here to acknowledge the helpful co-operation that at all times has been extended to the Inquiry by Roland d'Abadie of the Ministry of the Attorney-General. Mrs. Hershorn was not only a dedicated Administrator but she functioned most effectively as a memory bank in the place of the highly touted computerized evidence recall system that never materialized.

Donald Jack's legal acuity was drawn upon repeatedly and always to great effect throughout the Inquiry and the writing of the Report. In that regard he was ably assisted by Daniel MacDonald. If there are opinions and recommendations in the Report that are regarded by the legal profession as open to question, they cannot be attributed to Counsel to the Commission. Mr. Jack also displayed a masterful capacity to win the respect and confidence of the opposed interest groups. The organization and presentation of the evidence were immensely facilitated by his skilful guidance.

John Todd combined the cool and probing qualities of mind of an economist and engineer with a depth of experience as a consultant in the residential housing field. He functioned throughout as the sounding board for the Report as it was being written. In addition to the originality of his thinking, he had an unerring eye for errors, irrelevancies and inconsistencies in the material.

The research material developed by the research staff of Eric Adams, Pearl Ing and John Pringle provided important background material for the Report, and in addition they were all most helpful in finding and verifying relevant information. The research assistants were a highly competent group whose diligence is reflected in the in-house studies of many aspects of rent regulation.

Miriam Brown's competence in the use of the computer was turned to advantage in preparing background material for the Report. As well she contributed two appendices to the Report on the use of the computer in the operation of rent regulation.

The mass of books, reports and miscellaneous paper accumulated by the Inquiry was kept under control by Patricia Rubin. In a world flooded with the printed word, the assistance of a knowledgeable librarian was imperative.

Carroll Brooks was tireless and unflappable in the demanding task of word processing the drafts, re-writes and revisions of the Report as it made its way to finality. To her expertise at the keyboard she added the intuition of a cryptographer required to decipher the handwritten amendments and emendations.

The editorial attention given by Freya Godard to the text of the Report as it came from the author has been wholly for the best. An editor can only work with the material provided, but the editorial pencil can and did do much to remedy deficiencies in style and presentation. Not only was Ms. Godard eminently qualified in that regard but she took complete responsibility for the technical process of getting the Report printed.

Throughout the Inquiry the Commission has been fortunate to have had the benefit of secretaries who have not only carried out the usual functions in the office to everyone's satisfaction but who were at all times friendly and helpful in their relations with the public.

Connie Hurley was the ever cheerful receptionist on the 22nd floor for all but a few months of the Inquiry's presence.

And finally may I express my grateful thanks to my wife, who tolerated fractured domestic routines, late dinners and lost weekends with the greatest goodwill.

Glossary

Commission	Residential Tenancy Commission.
Guide	*Guide to the Cost Revenue Statement*, published by the Commission.
Guidelines	*Interpretation Guidelines*, published by the Commission. There are three kinds: Procedural Guidelines, Rent Review Guidelines, and Landlord and Tenant Guidelines.
Inquiry	Commission of Inquiry into Residential Tenancies.
1975 Act	*Residential Premises Rent Review Act, 1975 (2nd Session)*, S.O. 1975 (2nd Session), c. 12.
1979 Act	*Residential Tenancies Act*, R.S.O. 1980, c. 452.
1982 Interim Act	*Residential Complexes Financing Costs Restraint Act*, S.O. 1982, c. 59.

There are occasions in the Report where the context calls for a reference to a landlord or tenant rather than to landlords or tenants. A landlord or tenant may be a man, woman, husband and wife, or family; a landlord may also be a partnership, syndicate, trust or corporation. Since there is no singular pronoun in the English language that can be used to refer to every variety of landlords and tenants, this Report uses the masculine form, with apologies to the female component of the population. Corporations being notably insensitive, their feelings are not considered.

Introduction and Summary

It is the policy of the Government of Ontario that there should be rent regulation, and in its own way the scheme now in operation serves that purpose. The task of the first phase of the Inquiry[1] has been to conduct a full investigation of the principles and practices of rent regulation under the existing legislation and to recommend any changes that would make the scheme more satisfactory.

Rent regulation began in 1975; the conditions prevailing at that time are well-known. Inflation had been climbing at what seemed an alarming rate, and in most parts of the province vacancy rates for residential tenancies were low, creating the expectation that rents would continue to increase sharply. There was a public outcry against rent increases that was epitomized by the phrase "gouging landlords". The outcome was a scheme of rent regulation that seemed to have been designed to protect tenants against large rent increases.

The basic principle was that if rent increases were restricted, landlords would be unable to impose rent increases that simply reflected scarcity of supply. The scheme of regulation operated in two ways, which in this Report are referred to as rent control and rent review.

On the rent control side, it was taken for granted that, because of inflation, landlords' costs would necessarily rise and some increase in rent was inevitable. The scheme accordingly provided for a rent increase up to a fixed amount for which permission was not required. That increase is referred to in this Report as the statutory increase. It was originally 8 per cent a year; in 1977 it was lowered to 6 per cent a year, where it has remained.

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[1] See Glossary.

Under the 1975 Act[2] tenants could dispute the statutory increase and a Rent Review Officer could order a lesser increase in keeping with the landlord's actual cost increases. The right to dispute a statutory increase on the basis of the landlord's costs was not continued in the 1979 Act.[3]

It may have been considered in 1975 that the statutory increase would be sufficient to cover the effects of inflation on the landlord's costs, but when inflation rose to double-digit figures in 1979 and 1980, that was probably no longer the case. The Report recommends that a ratio should be established between a relevant cost inflation index and the statutory increase. The rate of the statutory increase should be reviewed annually and adjusted to maintain the designated ratio between it and the rate of inflation.

On the rent review side, a landlord who finds that the statutory increase is less than the increase in his costs can make a whole building rent review application for permission to raise rents by more than the statutory increase in order to pass through his increased costs. The increase allowed is the amount justified by increased operating and financing costs and capital expenditures plus any amount necessary to prevent the landlord from sustaining a financial loss.

A basic imperfection in the scheme of rent review arises from the combination of the two-year time frame in which rent review operates and the landlord's freedom to choose when to go to rent review. The cost-pass-through system of rent regulation in Ontario simply compares present and future costs in two successive years, the increase being added to rents in the second year. The two years are insulated from the time periods in other rent review applications, and unless the landlord makes successive annual rent review applications, there is no way of correcting any errors in cost projections or making adjustments for expenditures the landlord has recouped.

The Report recommends two corrective measures, "base-year review" and rent correction hearings. Under the former, when a landlord does make a further rent review application, the cost comparison will be in respect of the period between that review and the original review, even though the previous review may have taken place several years before. Under base-year review, the cost-pass-through concept would be applied in a more controlled way. Rent correction hearings would be initiated by the tenant and would provide a means whereby the Commission[4] could promptly correct errors in cost projections and adjust for expenditures the landlord has recouped if the landlord does not himself apply for a further rent review.

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[2] See Glossary.

[3] See Glossary.

[4] See Glossary.

The resulting cost-pass-through system of rent regulation would hold rent increases close to cost increases. If that were done, the landlord's financial position would stay pretty much the same. However, the effects of inflation on the landlord's income should not be ignored; hence, it is recommended that there should be an explicit inflation adjustment in the ordered rent increases.

A second imperfection in the scheme of rent review is that the accounting years in which the landlord calculates his cost and rent increases do not correspond to the twelve-month periods that determine when the tenants start paying the rent increases. The result is that the landlord's cost increases in his accounting year may be greater or less than the rent increase he receives in the same year. This is unsatisfactory to either landlords or tenants, depending upon whether the cost increases are greater or less than the rent increases. The problem can be solved by bringing the twelve-month periods in which rent increases take effect to a common anniversary date. Another solution would be to incorporate surcharges in the permitted rent increase. The technique is reviewed in the technical analysis in section 11.3.2. The practice of surcharging would, however, involve annual applications for whole building rent reviews and because of the burden this would impose on all concerned, the practice is not recommended.

The 1979 Act contains a provision, which was not in the 1975 Act, whereby a tenant can apply to the Commission for an order requiring the landlord to repay rent that the tenant paid to the landlord and that was higher than the rent permitted by the legislation. The tenant may also apply for an order declaring the rent that may lawfully be charged. Neither the 1979 Act nor the material published by the Commission states how the permitted or lawful rent shall be calculated. The Report recommends a new concept called "schedule rent", which is to be used when the Commission is determining the permitted rent or lawful rent. Schedule rent is the rent the landlord would charge if he had taken the statutory increases since the introduction of rent regulation or since the last order by the Commission setting the rent.

The Report differs in a fundamental way from the Commission in its understanding of the manner in which Commissioners should function when hearing and disposing of rent review and tenants' applications. The position taken by the Commission is that the individual Commissioner is free to interpret and apply the 1979 Act as he sees fit. The position taken in the Report is that rent regulation cannot treat all landlords and tenants fairly unless it is administered uniformly in accord with authoritative procedural rules and interpretations of the Act. The Report recommends that the

Interpretation Guidelines and the *Guide to the Cost Revenue Statement*[5] published by the Commission for the information of Commissioners and the public should have authoritative status. The Report does not recommend that they should be replaced by regulations. The Commission should have the responsibility of revising its Guidelines and other publications when necessary.

The Report further recommends that the Board of Commissioners should include members of the public representing landlords' and tenants' interests and that it should convene public meetings to hear representations regarding the content of the material it publishes.

Much was said during the hearings about delays in completing whole building rent review applications. The Report recommends a course of action designed to bring the review process to completion as near as possible to the time when the first rent increases will become effective. Time limits are prescribed for successive steps in the rent review and appeal hearings, and the necessity for meeting the time limitations is emphasized.

With regard to the enforcement of the Act, the Report recommends in Chapter 13 that certain penal sections in the 1975 Act that were omitted from the 1979 Act should be restored and that the Commission should take a positive approach to enforcing the law it is required to administer.

The Inquiry has been requested by the Minister to examine the matter of a rent registry. The Report takes the position that it is imperative to have some method of monitoring rents so as to gauge the extent to which landlords are complying with the law and that the prejudice to tenants of not knowing what rents they should pay ought to be corrected. The Report recommends that landlords should maintain rent schedules showing the maximum rents charged for the units in their complexes and that the Commission should keep a comprehensive rent registry for the entire province. The requirements for rent schedules and a rent registry would apply only to controlled rental units. The rent schedule would record schedule rents, to which reference has been made above, and the information in the schedule would be freely available to tenants and prospective tenants of the unit.

The Inquiry has given its attention to several matters not directly involved in the rent-setting process. With regard to tenants' associations, the position taken in this Report is that, as voluntary unincorporated organizations, they serve a useful function in the rent review process and should not be discouraged. They are not, however, analogous to trade unions, and should not function as the agent of individual tenants in rent review hearings. The

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[5] Throughout the Report, the *Interpretation Guidelines* and the *Guide to the Cost Revenue Statement* are referred to as the Guidelines and the Guide respectively.

Report makes no recommendations regarding the structure of tenants' organizations.

Consideration was also given to the position of boarding houses and lodging houses under the 1979 Act. The Report gives a number of reasons for saying that the scheme of rent regulation under the Act is not suited to setting rents paid for accommodation in those places.

The Report comments on certain provisions of the 1982 Interim Act,[6] which now stands to be repealed on December 31, 1984. It recommends that the provisions of the Act with regard to the pass-through of financial loss resulting from the purchase of a residential premises should remain. The Report also recommends that the equal percentage apportionment of the total rent increase ordered in a whole building rent review as provided in the 1982 Interim Act should be discontinued and the method of apportionment should revert to the so-called equalization technique.

The Order in Council instructed the Inquiry to examine the state of the legislation resulting from the decision of the courts that the Commission could not replace the civil courts in connection with landlord and tenant matters. The Report takes the position that it would be inadvisable to continue the effort to integrate landlord and tenant law with rent regulation, and it recommends that the provisions of the current legislation dealing with the Commission and rent regulation should be contained in a separate rent regulation statute.

The Report contains a number of recommendations that are not specifically referred to here. All the recommendations are consolidated in a section following Chapter 18.

The Inquiry has conducted its study of rent regulation in Ontario under the current legislation without reference to alternative schemes or the broader aspects of rent regulation. In the second phase of the Inquiry attention will be given to those matters, including the effect of rent regulation on the supply of affordable housing, and measures in addition to rent regulation that the Province of Ontario might take to help provide adequate accommodation at fair rents.

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6. See Glossary.

Chapter 1

Evolution of Rent Regulation in Ontario

The evolution of Ontario's current scheme of rent regulation can be traced back to 1975. In that year inflation emerged as a political issue that led to several anti-inflation measures at both levels of government, the primary one being the establishment of the Anti-Inflation Board (AIB). In conjunction with the initiatives of the AIB, the federal government requested the provinces to adopt provincial anti-inflation measures, including regulation of residential rents.[1] Although the Ontario system conforms to the principles laid down by the Minister of Finance in 1975, the government had committed itself to rent regulation in some form some time before the Minister's statement.

Rent regulation, as imposed by the 1975 Act and continued in 1979 when the 1975 Act was replaced, is sometimes described as the "cost-pass-through method". The 1975 Act imposed a limit on rent increases for the residential premises to which it applied with the exception that an additional increase might be allowed on application to a Rent Review Officer. Rent Review Officers were appointed by the Lieutenant Governor in Council and, for the purposes of a hearing, had the powers of a Commission under Part II of *The Public Inquiries Act, 1971*. *The Statutory Powers Procedure Act, 1971* did not apply to proceedings before Rent Review Officers. An application to a

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1. On October 14, 1975, the Minister of Finance said in the House of Commons:

> The provincial governments are being asked to undertake responsibility for implementing a program of rent control based upon the following principles: (a) increases up to a certain percentage would be permissible, (b) increases above this percentage must be justified on the basis of increased costs, (c) new structures where rents have not yet been established would be exempt from control for at least five years after completion of the building in the event that rent control should be in effect for that length of time. This is to ensure an adequate incentive for construction of new rental accommodation.

Rent Review Officer was made in respect of one or more residential premises as the landlord saw fit, although the Officer could order the landlord to apply for the settlement of the rents of all or any of the remaining residential premises in the building, in which case all the applications would be heard together.[2] Both the landlord and the tenant could appeal the decision of a Rent Review Officer to the Residential Premises Rent Review Board. The members of the Board were appointed by the Lieutenant Governor in Council; at least half of them were required by subsection 12(1) to be "persons representative of tenants". The Board proceeded by way of a hearing *de novo* and could affirm the decision of the Rent Review Officer or make any other decision the Officer was authorized to make. The Board was not an administrative body and had review powers only. The administration of the Ontario Rent Review Program, as it came to be known, was initially in the hands of the Ministry of Housing but was transferred to the Ministry of Consumer and Commercial Relations in January 1976.

The 1975 Act set out the matters that a Rent Review Officer should consider as justification for a rent increase. He was to consider whether the increase in rent sought by the landlord was "necessary in order to prevent the landlord sustaining a financial loss in the operation of the building in which the residential premises are situate" (clause 7(2)*(b)*). He was authorized to approve an increase sought by the landlord if he was satisfied "that increased operating costs and capital expenses justify the amount of the rent increase" (clause 7(3)*(a)*).

Discretionary guidelines for the Rent Review Officers were developed by the Ministry. These guidelines and their successors under the 1979 Act are discussed in detail in Chapter 3.

The 1975 Act stood to be repealed on December 31, 1978. On October 30, 1978, bill 163, entitled "An Act to Reform the Law Respecting Residential Tenancies" (which became the 1979 Act) was introduced in the legislature by the Minister of Consumer and Commercial Relations. After numerous changes, the bill was passed by the legislature and was assented to on June 22, 1979. It was to come into force on a day to be named by proclamation. During the passage of the bill through the legislature, the date for the repeal of the 1975 Act was extended by successive amending acts to November 30, 1979. On November 28, 1979, the provisions of the 1979 Act regarding the Residential Tenancy Commission rent review and procedural matters were declared in force. Those sections of the 1979 Act are still the only ones in force; they are listed in Appendix A.

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[2] Additional powers were conferred on Rent Review Officers by section 11 of the 1975 Act:

> 11. In addition to his other jurisdiction under this Act, the Rent Review Officer may, upon the application of any landlord, tenant or sub-tenant of residential premises, hold a hearing and determine whether,
>
> (*a*) the discontinuance of a service, privilege, accommodation or thing by the landlord has resulted in a reduction in a tenant's use and enjoyment of residential premises and constitutes an increase in rent;
>
> (*b*) a sub-tenant under a tenancy agreement of residential premises has been charged a rental increase which is prohibited by section 10; or
>
> (*c*) this Act applies to particular residential premises.

The purpose and intent of the 1979 Act were stated by the Minister when he introduced bill 163 in 1978:

> The bill takes the residential aspects of the *Landlord and Tenant Act*, which has its origins in medieval law, as well as present common law, and without a single "notwithstanding" combines the two elements, together with revised rent review legislation, into a clear, concise statute.

The Minister's aspirations were frustrated by a successful attack on the constitutional validity of some of the provisions of the 1979 Act, which culminated in a decision of the Supreme Court of Canada on May 28, 1981. As a consequence, the provisions of the 1979 Act incorporating the provisions of the *Landlord and Tenant Act* that govern residential tenancies have never been declared in force.

It is helpful to an understanding of the 1979 Act to review the extent to which the 1975 Act was continued and the ways in which it was significantly changed. The basic principles of rent regulation are the same in both Acts. Each Act is concerned with the amount by which a landlord may increase his rents because of increased costs and financial loss. It is assumed there will be an annual increase of some amount: hence, the landlord is allowed to raise his rents by not more than a prescribed amount, referred to in this Report as the statutory increase, without having to burden himself or the regulatory system with the cost and effort of an application. Having gone this far together, however, the 1979 Act departs radically from the 1975 Act by taking away from the tenants the right they had under the 1975 Act to require the landlord to justify an intended statutory increase.

As was the case with the 1975 Act, the 1979 Act does not apply to residential premises, or rental units, as they came to be known in the 1979 Act, that are located in a building of which no part was occupied as rented residential premises or as a rental unit before January 1, 1976. The intent is to exempt construction in and after 1976 from rent regulation.[3] Also exempted from the provisions of the 1979 Act are certain other living accommodations not specifically referred to in the 1975 Act.

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[3] The exemption is phrased in such a way, however, that the rents of newly created rental units in a renovated building that was built before 1976 may nevertheless become subject

The 1979 Act, however, introduced an exemption of major importance to rent regulation that had not existed under the 1975 Act, namely, the exemption of units that rent for $750 a month or more. When bill 163 was introduced, the amount was $500 rather than $750. At one stage during passage of the bill through the legislature, the provision for that exemption was dropped, but on third reading it was restored at its present level. To come into effect, the exemption required an Order in Council, which was promulgated on March 7, 1980.

The most important procedural change made by the 1979 Act is the requirement for a whole building review. This had been foreshadowed by the provision in the 1975 Act, referred to above, whereby the Rent Review Officer could order the landlord to undertake what was in effect a whole building review. The statutory recognition of the practice was the outcome of the experience with the unit-by-unit procedure under the 1975 Act. A landlord's operating and financing costs, capital expenses, and financial losses do not pertain to any one unit (unless of course it is a single unit structure), but together they lead to a total rent increase, which must be apportioned among the several rental units. Moreover, if the landlord of a multi-unit structure applies for rent increases for one unit at a time, he will involve both himself and the Commission in a repetition of evidence and an unnecessary expenditure of time. Whole building review does not depart from the cost-pass-through concept of rent regulation but makes the review process more comprehensive.

On the administrative side, the 1979 Act made changes that went to the root of the regulatory process. It established a tribunal to take over the administration of the new Act, namely, the Residential Tenancy Commission with quasi-judicial and broad discretionary powers. The 1979 Act discontinued the earlier practice of appointing members who were representative of tenants. The discontinuing of the practice was an implicit negation of partisanship on the part of the Commissioners. Subsection 93(1) of the 1979 Act directs that every decision of the Commission shall be upon the real merits and justice of the case.

In this general overview and comparison of the 1975 and 1979 Acts, one further change of substance calls for comment. The 1975 Act specifically made it an offence for a landlord to charge more than the statutory increase, to charge a rent increase to take effect within less than a year after the last

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to rent regulation. For example, if a building that was used for commercial or industrial purposes before 1976 contained rental accommodation for a superintendent or caretaker, any rental units created in that building since 1975 would be subject to rent regulation. Consideration might be given to rephrasing the exempting section of the Act.

increase, to collect more than the maximum rent chargeable under an order of a Rent Review Officer, to refuse to file information when requested to do so, to refuse to file a multi-unit application for rent review when so ordered, and knowingly to furnish false information. The last offence was the only one of those that was carried into the 1979 Act.

The 1979 Act has been amended only once. In December 1982, the 1982 Interim Act was enacted in response to the crisis resulting from the purchase and resale for a large amount of money of some 11,000 rental units in the Toronto area. The 1982 Act, however, did not change the scheme of the 1979 Act in any significant way. Section 3 of the 1982 Interim Act prescribed a formula to be used for determining the part of a financial loss that could be carried into rent increases in a year when the loss resulted from the purchase of the complex. Section 4 deferred the allowance that might be made for hardship relief when there had been a purchase of the complex, and section 5 changed the method of apportioning among the tenants the total rent increase allowed on a whole building review.

Chapter 2

The Residential Tenancy Commission

The Inquiry has been impressed, not only by the complexity of the principles and procedures of rent regulation, but by the sensitivity to the human factor in the landlord-tenant relationship that must be displayed by all levels of Commission personnel. Much of the evidence presented during the Inquiry, both by landlords and tenants, contained an undercurrent of dissatisfaction with the Commissioners and the Commission staff. The senior administrative staff of the Commission is aware of the problem and has taken steps to alleviate it by seeking to engage people who will be responsive to the special demands that will be imposed on them and by giving training in the law and procedures of rent regulation both to Commissioners and to the staff.

2.1 Structure of the Commission

The Residential Tenancy Commission is composed of such number of Commissioners as the Lieutenant Governor in Council determines. As of March 31, 1984, there were forty-one full-time Commissioners—thirty-six men and five women. Commissioners are appointed for a term of five years and may be reappointed; they may be removed from office only for misbehaviour or for inability to perform their duties properly. Section 74 of the 1979 Act, which directs that each Commissioner shall devote his full time and attention to the work of the Commission, has not been declared in force, and a number of part-time Commissioners have been appointed. More than half the full-time Commissioners and all the part-time Commissioners have one function only: to hear and dispose of applications by landlords and tenants.

Some Commissioners are appointed by the Lieutenant Governor in Council as Appeal Commissioners. Two of the three members of the appeal panels, which hear appeals from first-level hearings conducted by Commissioners sitting singly, must be Appeal Commissioners. Some Appeal Commissioners, however, also sit as first-level hearing Commissioners.

From among the Commissioners, the Lieutenant Governor in Council designates the members of the Board of Commissioners, in whom is vested the administration of the affairs of the Commission. A member of the Board sits as the third member of each appeal panel. One member of the Board of Commissioners is designated by the Lieutenant Governor in Council as Chief Tenancy Commissioner, who is chairman of the Board and chief administrative officer of the Commission. As of March 31, 1983, the Board comprised, in addition to the Chief Tenancy Commissioner, three Regional Commissioners, to whom reference is made below, four Appeal Commissioners, and two officials of the Ministry of the Attorney General. The ministry officials, although Commissioners, do not participate in hearings.

The Commission has a number of offices: a head office in Toronto; three regional offices in Metropolitan Toronto, London, and Ottawa; and twenty local offices across the province. One member of the Board of Commissioners is based in each of the three regional offices and holds the title of Regional Commissioner. Commissioners and sometimes Appeal Commissioners are based in most of the local offices. An organization chart that accompanied the 1982-83 annual report of the Commission is reproduced as Appendix E to this Report.

The 1979 Act states that the Minister may establish regions in Ontario for the purposes of the Act, and in 1979 nine regions were established. Section 87 of the Act reads as follows:

> 87. An application to the Commission may only be made, and all proceedings before the Commission shall be held, in the region in which the residential complex in question is situate, unless the parties otherwise agree in writing or the Commission otherwise directs.

The nine regions established under the Order in Council have no apparent relation to the three regions into which the Commission has divided the province for administrative purposes or to the places in which local offices are situated. Nor is it clear where notices and other documents to be given to the Commission should be delivered. A booklet entitled *Rent Review: Here are the Facts,* published by the Commission in February of 1983, merely directs that the landlord should file his application for rent review "with the Residential Tenancy Commission" and gives the addresses of the Commission's twenty-one offices. But it does not show the regional boundaries, and consequently some landlords and tenants might have difficulty deciding which office they should apply to. Another pamphlet, entitled *Appealing a* *decision: it's a matter of facts*, is more helpful: it directs that Notices of Appeal should be filed with the local Commission office that issued the decision. In most cases, that address will be found on the order.

A matter that has been criticized is the cumulation of powers and responsibilities conferred on the Commission. The Commission, as the Board of Commissioners, formulates the Guidelines and the Guide, which are practically the only source of information for the public regarding procedures under the 1979 Act and interpretation of the Act. Board members also sit on the appeal panels, whose decisions provide the ultimate interpretation of the Guidelines, save on questions of law. The Appeal Commissioners function on occasion as first-level hearing Commissioners. Of course, they do not hear appeals from their own decisions, but the connection between the two levels is close. The Commissioners in charge of administration in the three regions into which the province is divided are members of the Board of Commissioners and also sit as hearing Commissioners or Appeal Commissioners.

To an outside observer, the impression is of a closed organization that might not be sufficiently aware of the need for change when it arises. This comment should not be taken as criticism of the senior administrative personnel who appeared before the Inquiry. The point is that it is desirable for an operation that plays such an important part in a matter of vital interest to the public to have broader representation from the public.

One way of ensuring that participation would be to establish an advisory committee of landlords and tenants. There would be, however, a considerable risk that the committee would become too polarized to be effective. Furthermore, it should have its own secretariat and advisory staff, or it might become a captive of the Board. Certainly, the thought of adding another layer to the administrative structure of rent regulation is not attractive. For those reasons, an advisory committee is not recommended.

A step in this direction would be to provide for representatives of landlords and tenants to be appointed to the Board of Commissioners. This is not a reiteration of the requirement of the 1975 Act that at least one-half of the members of the Residential Premises Rent Review Board under that Act should be persons representative of tenants. That board was an appellant tribunal with no administrative responsibilities, and its decisions bore directly on the rights and obligations of tenants and landlords. The Board of Commissioners, on the other hand, is wholly an administrative body with no powers of decision in rent review or tenant applications. It does, however, lay out the policies and procedures that should be followed in the application of the 1979 Act. That being so, some direct participation in formulating those policies and procedures by those most affected would be desirable.

***Recommendation 1.* There should be tenant and landlord representatives on the Board of Commissioners.**

The majority of the Board members should be Commissioners; the representatives of the government and the special-interest members should not be Commissioners. The Board should be renamed Board of Management or Board of Directors.

Public participation should be further augmented by requiring the Board to hear public representations in open meetings regarding any rules, Guidelines, and amendments to rules or Guidelines that the Board has under consideration.[1] The presence of community representatives should ensure that those matters will be given fair and adequate attention. However, the public would not be present when decisions were being made with regard to such matters or when the Board was dealing with administrative matters.

In the 1979 Act the word Commission is used with various meanings. Clause 1(1)*(c)* and section 71 define Commission as the group of Commissioners. In some contexts, however, Commission clearly refers to the offices and staff of the Commission, as in subsection 117(1), for instance, which provides that a party appealing an order of a Commissioner may file a notice of appeal with the Commission. In sections 79 and 80, which have to do with staff and administration, and section 82, which deals with the Commission's policy guidelines, Commission seems to mean the Board of Commissioners.

Other problems arise because Commission is sometimes used in the 1979 Act to refer to an individual Commissioner. Much of the Commission's work consists of processing applications for rent review, which is done by the staff, and hearing applications, which is done by Commissioners under section 126. Subsection 103(2) states that a hearing under subsection 126 shall be held before a Commissioner and the Commissioner may exercise any of the powers of the Commission. Subsection 103(2) applies only to proceedings at the hearing itself and does not extend to other matters in which a Commissioner may be involved. For instance, subsection 102(2) says that the Commission may refuse to accept any application where in its opinion the matter is trivial or frivolous. Who should exercise this power and in what manner?

Many such vague and indeterminate provisions are found in the 1979 Act. Regardless of what changes in procedures may result from the recommendations made in this Report, it would be most desirable for the Act itself or the Guidelines to contain instructions for the public on how to use the Act. There is a risk of course that the Act or the supplementary provisions might become too detailed to be usable by the average citizen. Nevertheless, consideration could be given to including in the 1979 Act a provision conferring the powers of the Commission in procedural matters on a resident Commissioner in each region or locality where there is an office of the Commission. It may be that something like this is a common practice. If so, it should be recognized and confirmed.

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[1] This point is discussed further in Chapter 3, where it is the subject of Recommendation 7.

2.2 Duties and Functions of the Commission

Section 81 of the 1979 Act sets out the duties of the Commission under several heads in clauses (*a*) to (*e*), which are discussed below.

2.2.1 Duty to Administer the Act

Clause (*a*) reads: "[The Commission shall] perform the duties assigned to it by or under this Act and shall administer this Act and the regulations." The principal function of the Commission is to hear and determine landlords' and tenants' applications under sections 126, 127, and 129, and appeals under section 117. Notwithstanding the wide-ranging discretionary powers conferred on the Commission by sections 131 and 132 and the legal questions that must be answered when disposing of applications and appeals, that function is described as administrative in the reasons given by the courts in the constitutional reference. For that reason and because rent review was not a matter that engaged the attention of the courts when the *British North America Act* was enacted in 1867, the way was cleared for the rent review provisions of the 1979 Act to be declared in force. Jurisdiction to entertain such applications is conferred by subsection 84(1) of the 1979 Act, which reads as follows:

> 84.-(1) . . . the Commission has exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Act and as to any matter or thing in respect of which any power, authority or discretion is conferred upon the Commission.

The foregoing provision is supplemented by subsection (2), which authorizes the Commission to determine certain specific matters:

> 84(2) The Commission may determine,
> (*a*) whether this Act applies to a particular living accommodation; and
> (*b*) the rental units, common areas, services and facilities included in a particular residential complex.

The policy of the Commission has been to limit its quasi-judicial function under rent review to disposing of questions regarding the interpretation and application of the Act only when such questions arise during hearings under the sections mentioned above. There are times, however, when a landlord or a tenant might reasonably expect an answer to a question pertaining to rent review without having to launch an application for a whole building rent review or a rent rebate. Subsection 84(2) refers to two such matters. Other questions might be, for example, whether a rental unit was exempt under section 128 or 134. It would be more satisfactory for both tenants and landlords if there were an expeditious procedure by which the Commission could hear and determine an application on a particular matter of concern and make a determination.

Recommendation 2. **The Commission should institute a procedure leading to declaratory orders in the exercise of its jurisdiction under subsection 84(2) to hear and determine matters and questions arising under the *Residential Tenancies Act.***

The investigation of breaches of the Act and enforcement of its provisions are not specifically stated to be the responsibility of the Commission, but they can be said to come within the general duty of administering the Act. The topic is discussed at length in Chapter 13.

If section 33 of the 1979 Act providing for a rent schedule were brought into force or if some other legislation providing for a rent registry or a rent schedule were enacted,[2] the administrative responsibility for the schedule or registry would come within the Commission's general duty to administer the Act.

2.2.2 Duty to Review the Act and Regulations

Clause (*b*) of section 81 reads: "[The Commission shall] periodically review [the] Act and the regulations and recommend from time to time amendments or revisions thereof." The only amendments to the 1979 Act are those in the 1982 Interim Act, and the regulations are minimal. The necessary amplification and elucidation of the scheme of rent review, which are set out in brief and very general terms in the legislation, were originally provided by memorandums from the Technical Support Group to the Rent Review Program under the 1975 Act; since the 1979 Act came into force, they have been contained in the Guidelines and the Guide published by the Commission. From time to time there have been amendments to this material. It may have been the intent of clause (*b*) that policies and procedural amendments respecting the administration of rent review were to emanate from the legislature or the responsible Minister on the basis of recommendations from the Commission, but that has not happened.

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[2] Rent schedules and a rent registry are recommended in Chapter 17.

2.2.3 Duty to Advise the Public

Clauses (*c*) and (*d*) of section 81 read: "[The Commission shall] advise and assist the public in all residential tenancy matters including referral where appropriate to social services and public housing agencies;" and "take an active role in ensuring that landlords and tenants are aware of the benefits and obligations established by [the] Act." Those two clauses give legislative expression to the explanatory note that accompanied bill 163 when it was introduced in the legislature in 1978. The note read:

> In addition to its adjudicative functions, the Commission will advise and assist the public on all residential tenancy matters and generally ensure that landlords and tenants are aware of their respective benefits and obligations.

It was the intention of the legislature that section 81 would replace section 124 of *The Landlord and Tenant Act*, which was to be repealed. Subsections 124(2) and (3) of *The Landlord and Tenant Act* read:

> (2) The council of a municipality may by by-law establish a Landlord and Tenant Advisory Bureau.
>
> (3) The functions of a Landlord and Tenant Advisory Bureau are,
> (*a*) to advise landlords and tenants in tenancy matters;
> (*b*) to receive complaints and seek to mediate disputes between landlords and tenants;
> (*c*) to disseminate information for the purpose of educating and advising landlords and tenants concerning rental practices, rights and remedies; and
> (*d*) to receive and investigate complaints of conduct in contravention of legislation governing tenancies.

Section 124 of *The Landlord and Tenant Act* was included in that Act by an amendment passed in 1968. Under the authority of the section, a number of municipalities set up Landlord and Tenant Advisory Bureaux. In the Commission's 1981-82 *Report to the Minister*, submitted in August of 1982, the following note appears:

> Representations had been made in the past by various municipalities in regard to assumption, by the Province, of the role of the

> municipal Landlord and Tenant Advisory Bureaux and/or provision of financial assistance by the Province. (p. 20)

In the Commission's 1982-83 *Report to the Minister*, it was said:

> Effective September 1, 1982 the Commission assumed additional responsibility for advising the public on all landlord and tenant matters, a function until then performed by the municipally operated and funded Landlord and Tenant Advisory Bureaux. (p. 12)

As that remark indicates, the government, in 1982, stopped funding the municipal bureaux and their responsibilities were taken over by the Commission, to be exercised by it under clauses 81(*c*) and (*d*) of the 1979 Act.

In fact, the Rent Review Program under the 1975 Act had almost from its inception been answering public inquiries regarding both rent review and landlord and tenant matters. The practice of answering such inquiries was continued under the 1979 Act; from January 1 to November 1, 1979, nearly 103,000 inquiries were received; of those, 41 per cent concerned landlord and tenant matters only and 47 per cent concerned rent review only. The Commission's 1982-83 *Report to the Minister* states that for that period the Commission dealt with over 291,000 inquiries, which were about equally divided between landlord and tenant matters and rent review.

In evidence to the Inquiry, the Chief Tenancy Commissioner described the advisory functions of the Commission:

> It [the Commission] endeavours to lay before the enquirer, whether it be by telephone, in person or in writing, the alternative choices that an individual has to make but stops short of selecting a particular avenue to proceed. Specifically, the Commission provides advice, information and assistance, short of becoming an agent for a party. (Transcript, June 28, 1983, p. 115)

When the witness was asked how the information staff at the Commission responded to enquirers, he replied:

> Information staff who provide information to enquirers . . . provide . . . basic information under the Act itself, what the Act says, the interpretation of the Residential Tenancy Commission . . . . In the case of landlord/tenant matters, how matters had been decided by the courts on various issues. Where there are a number of avenues open to either a landlord or a tenant to solve his or her particular problem, the Residential Tenancy Commission will explain the

> number of avenues open to the individual but will stop short of advising which particular avenue. Rather when it becomes that complex . . . our training to the Commission staff is that the staff advise the public that they should seek independent legal advice on that matter. (Transcript, June 28, 1983, pp. 120-121)

The witness's comments on the suggestion that the advisory function of the Commission should be completely separated from the Commission were:

> First of all, it would be contrary to the original intent of the government and that is that the public have one place to go to for all matters relating to the landlord/tenant relationship. Secondly, it is my opinion that a separate group, if it were established as a separate group to provide information to individuals, would soon find themselves being placed in a position of being asked to become an agent. Thirdly, it is also possible that they may become somewhat out of touch, and I am not saying totally out of touch but somewhat out of touch with the current interpretations as determined by the courts if they are removed from the offices of the Residential Tenancies Commission. (Transcript, June 28, 1983, p. 121)

It was suggested by the tenants' advocate that the advisory function of the Commission be taken from the Commission for the reason that the Commission did not give "creative advice". The point was put in several ways. Those advocating the tenants' interests said that "advice [should] be given by people who were advocates for tenants" and "that advice ought to be provided in an advocacy setting by people who are involved in that advocacy" (Transcript, August 23, 1983, p. 66.) A distinction was drawn between advice and information. It was admitted that it was quite in order for the Commission to provide simple basic information about the Act it administers and the Commission was needed for that purpose. On the other hand:

> If it comes to other matters, and most specifically those relating to landlords and tenants, it is our submission that it is not appropriate for the Commission to be giving that advice, because without going beyond what it would be proper for them to do, they can't possibly give all the advice that a tenant needs to have. (Transcript, August 23, 1983, p. 73)

The position taken in this Report is that the advisory function of the Commission is useful and necessary and should not be discontinued. At the same time it is recognized that the advice given by a person who may not be an advocate for either landlords or tenants might not be much more than mere factual information. It is quite evident that the Commission understands the distinction and its officials conduct themselves accordingly. Of course, a landlord or a tenant often needs more than just information or a reference to the Act or the pertinent Guideline, but there was no suggestion that the Commission would try to dissuade anyone from seeking further advice; in fact, the evidence was to the contrary. The reason behind the tenants' submission may have been that a tenant who had been given neutral information by the Commission might accept it as adequate advice regarding his problem and would, to his own disadvantage, not pursue the matter further.

***Recommendation 3.* The advisory services rendered to the public by the Commission regarding landlord and tenant matters and rent review matters should be continued.**

2.2.4 Duty to Publish Summary of Decisions

The final clause of section 81 is (*e*), which reads: "[The Commission shall] periodically prepare and publish a summary of significant decisions of the Commission and the reasons therefor." The Commission has published Summaries of Significant Decisions in annual volumes, of which there are now four, containing abbreviated reports in case note form of some 177 decisions of Commissioners and appeal panels.

2.3 Background and Training of Commissioners

Although adverse comments of a general nature were made from several directions regarding the ability of some Commissioners to understand the financial and legal matters pertaining to applications that were heard by them and regarding their competence to conduct a hearing in a satisfactory manner, there were no direct allegations of bias on the part of the Commissioners or the staff. It was asserted, again in general terms, that there had been times when a Commissioner had not been as rigorous as the tenants had wished in requiring the landlord to establish the amount of his costs; in other words, it was implied that some Commissioners were inclined to limit the part the tenants consider they should play in rent review hearings. It was also asserted by the landlord's representatives that the Commissioners had not always been strict enough in restricting discussion in the hearings to monetary matters.

It is not surprising that the parties to a rent review application should be critical of the way in which Commissioners conduct themselves. The Commissioners are required to administer a complex scheme of rent review, and the atmosphere in which they work is often tense. Their position would be much easier and there would be less reason for adverse comment if there were a common understanding of the purpose of rent review under the current Ontario legislation. That is not the case at present, and the Commissioners are largely left to follow their own conception of the purpose of the legislation. When it does not accord with the opinions of some of those who are appearing before them, misunderstandings will occur.[3]

The 1979 Act does not lay down qualifications or grounds for disqualification for appointment as a Commissioner. Procedural Guideline No. P-3 states that Commissioners and staff must not "carry on the business of landlords", and for the purpose of the Guideline, carrying on the business of a landlord includes ownership of four or more residential units and ownership of more than 10 per cent of the voting rights in a corporation that owns or manages residential property. The implication and, it is understood, the application, of the first of those grounds for disqualification is that a Commissioner may own three or fewer residential units. No reason was given for this anomaly. The practice should be discontinued if indeed it is being followed.

The positive qualities that are essential in a Commissioner are integrity, diligence, and the capacity to be trained to understand and apply the principles of rent regulation. It is important that the remuneration should be high enough to attract people of that calibre. However, the duties of a Commissioner are not such as to make professional qualifications in law or accounting a prerequisite, although experience in those fields as well as in business is no doubt useful.

Considerable evidence was given regarding the training of Commissioners. Since the inception of the 1979 Act, it has been the standard practice to give new Commissioners a three-day training course. During the early years of the 1979 Act, that was about all the time that was available for training because the Commission was faced with an immediate backlog of applications. The situation was aggravated in 1981 and 1982 when sharp increases in interest rates brought a further flood of applications from landlords faced with large increases in financing costs. In the past year or so steps have been taken to extend the training available to Commissioners. Not only is initial training necessary but continuing refresher courses serve a most useful purpose.

***Recommendation 4.* All Commissioners should receive a thorough initial training and continuing refresher training. Refresher training should be made**

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[3] See Recommendation 8.

obligatory for all Commissioners. Funding should be made available to the Commission for this purpose.

2.4 Former Commissioners Acting as Agents

The question was raised whether Commissioners and members of the staff who have left the Commission should be allowed to appear as agents at hearings before the Commission. Under Procedural Guideline No. P-3, Commissioners are required, as a condition of their appointment, to execute and file an undertaking, prescribed in Schedule B to the Guideline,

> that in the event of a voluntary termination of my appointment as a Commissioner, I will not for a period of 12 months after the date of such voluntary termination, appear at a hearing before the Commission as agent for or on behalf of any party (except as specifically excepted hereafter) in any rent review proceeding under Part XI of the Residential Tenancies Act.

The exceptions are for a Commissioner appearing on his own behalf or on behalf of persons closely related to him. The tenants' advocate strongly urged that former Commissioners should be permanently barred from further appearances before the Commission. However, that would be an excessive restraint on the rights of the people affected. Moreover, it would unduly reduce the number of people who are competent to conduct applications on behalf of landlords and tenants. The policy laid down in procedural Guideline No. P-3 is adequate protection against possible abuse. Some matters, however, such as mediation and appeals, are dealt with in Part IX of the 1979 Act and therefore, strictly speaking, would not be covered by the undertaking. The reference in the undertaking to rent review proceedings under Part XI should be replaced by a reference to the Act.

One possible abuse is that a Commissioner conducting a rent review hearing or a member of the staff engaged in processing an application might favour an application presented by a former colleague or staff member. The practice of former Commissioners or senior members of the staff appearing before the Commission was criticized only by tenants. They do not, however, allege that Commissioners are biased in favour of landlords or that bias would result from the appearance before the Commission of former Commissioners or senior employees. The gist of the complaint is that the tenants involved in the application would suspect the Commission of bias and the public would begin to doubt the integrity of the Commission. However, it is considered that the argument that an association that ended twelve months earlier might create an impression of bias in the mind of the public is too tenuous to justify the absolute bar proposed by the tenants.

Recommendation 5. **The undertaking required from Commissioners regarding appearances before the Commission after they retire should cover all proceedings under the *Residential Tenancies Act* and not merely rent review proceedings under Part XI. The undertaking should be extended to include attendances on officials. The duration of the prescription need not be extended. The undertaking should be required from senior staff members as well as from Commissioners and should be required when new appointments are made to senior staff positions. The offices falling within the range of senior staff position should be specified.**

Chapter 3

Regulations or Guidelines?

The broad general principles underlying the scheme of rent regulation in Ontario were laid down in the 1975 Act and continued in the 1979 Act; the ways in which the principles are worked out and applied are found elsewhere than in the Act. Although many statutes, particularly regulatory statutes, are supplemented by extensive regulations promulgated under the authority of the Act, there are only three regulations under the 1979 Act: one that stipulates the monthly rental above which units are exempt from rent regulation, one that prescribes certain forms for which provision is made in the Act, and one that establishes regions for the purposes of the Act. The prescribed forms serve to elucidate phrases found in the Act, such as "the effective date" referred to in section 126, but they do not in themselves set out a system of rules to be followed in a rent review application.

The absence of regulations to fill out the scheme of the Act and make it workable and understandable left the responsibility for doing so in the first instance with officials of the Ministry under the 1975 Act and subsequently with the Commission under the 1979 Act. The process of rent review was new in Ontario and had to be developed in a highly empirical manner, which required a more flexible and expeditious treatment of emerging problems than would have been possible if they had had to be dealt with by regulation.

The flesh and blood, so to speak, of rent regulation is found in material published by the Commission and in decisions of the Commissioners and appeal panels that dispose of rent review and tenants' applications. The material published by the Commission comprises the Guidelines, the Guide, the *Procedures Manual*, the Cost Revenue Statement, and a number of other forms.[1] Most of the material is available for examination by the public in accordance with section 82 of the 1979 Act, which states:

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[1] A list of operational and administrative forms in use by the Commission is found in Appendix D.

> 82. All policy guidelines and procedural manuals issued by the Commission which may be used in making determinations under this Act shall be made available for examination by the public.

The Inquiry was informed that the Commission, specifically the Board of Commissioners, is responsible for the policies and content of its publications and is not subject to government direction or supervision. Although allowance must be made for a certain osmotic influence—two members of the Board are officials of the provincial government—even so, there is no reason to doubt that the government has taken a "hands off" attitude with respect to rent regulation since the administration was moved from the Ministry of Consumer and Commercial Relations to the Commission after the passage of the 1979 Act. Certainly it is most desirable that political influence should not in any way affect the disposition of particular cases. However, the government must take responsibility for the general policies of rent regulation.

The Commission's *Procedures Manual*, as its name suggests, contains detailed instructions concerning the mechanical and clerical activities of the Commission staff and does not call for comment.

The main source of information and guidance regarding the rent review process is the Guidelines, of which there are three kinds: Procedural Guidelines, Rent Review Guidelines, and Landlord and Tenant Guidelines; so far, there is only one of the third kind. Appendix C of this Report reproduces the table of contents of the volume of more than two hundred pages that contains the Guidelines. The Commission's policy on the purpose and use to be made of the Guidelines is found in the Introduction.

> Interpretation Guidelines are issued by the Board of Commissioners of the Residential Tenancy Commission. The Guidelines are not binding statements of law. They reflect the views of the Board with respect to the manner in which the *Residential Tenancies Act* should be interpreted and applied.
>
> Over time, these Guidelines will be extended to reflect the experience of the Commission in dealing with specific situations. They will also be amended from time to time if the courts or the Board determine any parts to be in error.
>
> The Guidelines are intended to assist Commissioners in making determinations under the Act. These guidelines are also intended to assist tenants and landlords in presenting facts and argument

> to the Commission. They are not intended to, nor do they in any way restrict the discretion of the Commissioner where the Act gives him discretion or where he has a different view of the meaning of the Act. Where the Commissioner disagrees with the interpretation of the Act contained in a Guideline, or determines that it would be inequitable to apply the Act in the manner suggested, he ought not to follow the Guideline. The Act itself will always govern the particular situation.

The financial data required for a rent review hearing are provided by the landlord in two documents. The first is the landlord's Application for Rent Review, which is prescribed as Form 2 in Regulation 901 under the Act. It contains information regarding the rental units in the complex, the rents currently being charged, and the increased rents the landlord proposes to charge. The other document is the Cost Revenue Statement, which is not a prescribed form. As its name indicates, it provides an itemized list of the landlord's revenues and of his operating and financing costs and capital expenditures, both actual and projected. The Guide, a brochure of some ten pages, contains explicit and detailed instructions for completing Form 2 and the Cost Revenue Statement. The Guide is not cross-referenced to the Guidelines.

Despite the availability of those materials, it is often difficult for landlords and tenants to know in advance of the hearing how the Commissioner will proceed. The Act, which is authoritative, provides little detail. The Guidelines contain much more detail, but they are discretionary. Although the Commissioners usually follow the Guidelines, it is within their discretion to treat costs differently than is specified in the Guidelines. Furthermore, the Guidelines do not purport to deal with every matter that may be relevant to an application.

Previous written reasons, especially if they are for the same building, could provide some assistance on matters not touched on by the Guidelines, but they too are not fully reliable since Commissioners are not bound by precedent. The usefulness of previous decisions is limited further by the difficulty of finding them. That is because, although they are available to the public, there are many thousands of decisions, they are not indexed by the matter dealt with, and each decision is available only in the office where the hearing was held. Even the *Summaries of Significant Decisions* noted earlier are of little assistance since they are not indexed, either in each volume or cumulatively. They are of some interest to the public, but they have little use as precedents for the development of rules and principles for governing rent review.

This Report is not in agreement with the policy of discretionary Guidelines. Commissioners hearing rent review applications are not independent decision-makers. There is nothing in the 1979 Act that gives a Commissioner the authority to follow his own interpretation of the Act or to exercise a discretionary power in any manner he might see fit. Under the 1979 Act, powers are conferred on the Commission, not on individual Commissioners; that is the import of subsection 103(2), which was enacted in order that a Commissioner might exercise the powers of the Commission.[2] It must follow from the fact that the powers of the Act are conferred on, and held by, the Commission and are exercised in its name, that in principle Commissioners among themselves should interpret and apply the Act in the same way except where the exercise of a discretionary power turns on the facts of a particular case.

When landlords or tenants seek the assistance or protection of the Act, they should be able, within reasonable limits, to foresee the probable outcome of a rent review hearing or other application in which they may become involved. To that end, rent regulation which is an administrative process, should be applied as uniformly as possible and should be conducted in accordance with comprehensive and authoritative rules and directions.

That is not an easy matter. The rent review process itself is highly complicated and calls for the exercise of discretion in determining the facts that enter into the ultimate calculation of a total rent increase. Many people, particularly those who have not had previous experience with rent review and are not familiar with business and accounting terminology and practice, will no doubt find it difficult to foresee the outcome of a rent review application. Nevertheless, as much certainty as possible should be built into the system. This can be done by explicit, comprehensive, and authoritative instructions that are readily available to the general public. The Guidelines, supplemented by the Guide, go an appreciable distance in that direction, but what they lack is authority.

When Commissioners are conducting rent review hearings and hearings on tenants' applications, it can be expected that they will often be faced with new and difficult questions of a legal or quasi-legal nature. When that happens, Commissioners can seek advice from the Board of Commissioners and, through them, from the legal and administrative staff at the head office of the Commission. That is a salutory procedure that should be encouraged. When such questions arise, the decision necessarily must be given by the Commissioner conducting the hearing, but if, after hearing the submissions and arguments of the parties, there is genuine diversity of opinion, he should be governed by the advice received from or through the Board. This kind of communication between the Board and the Commissioners conducting hearings will keep the head office administration in touch with current problems and stimulate revisions to the Guidelines.

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[2] 103(2) A hearing under subsection (1) shall be held before a Commissioner and the Commissioner may exercise any of the powers of the Commission and an order of the Commissioner shall be deemed to be the order of the Commission.

It was submitted by counsel for the landlords and for the tenants, as well as by others who filed briefs, that the rules on substantive matters now found in the Guidelines should be incorporated into the Act or into regulations promulgated by Order in Council under the Act. If there was a common reason for this point of view, it was probably a dissatisfaction with the way in which matters had been handled. The dissatisfaction stems not only from the emphasis on the non-binding character of the Guidelines but from the fact that the Commission's publications are written without the participation of the public.

The submission of the Canadian Bar Association (Ontario Real Property Section) to the Inquiry said:

> This Section recommends that the present system for making guidelines be eliminated with respect to substantive matters and that such matters be set out in a Regulation(s) to be made by the Minister only after notice to and consultation with interested organizations and parties.
>
> Such a change would expose the process of rulemaking to public scrutiny and debate and place responsibility for the rule in the hands of someone who would be ultimately accountable to those directly affected. (p. 8)

That course of action is not recommended. The 1979 Act is a clear indication of a government policy that rent regulation is to be administered by an independent Commission entrusted with a high degree of responsibility and discretion. If the government had intended to maintain ministerial control over the policies and procedures of rent review, it would have done so at the time by promulgating regulations to supplement the Act. That was not done, and the Commission has been left free to fill out the scheme of rent regulation through its own Guidelines and the Guide.

At the same time, the government is quite prepared to step in with legislation regarding particular matters when it considers that circumstances warrant. That is evident from the 1982 Interim Act, which reversed and amended the Commission's policies on the apportionment of rent increases and the pass-through of financial loss. It must be recognized not only that rent regulation is itself basically a political matter but that the techniques and policies of rent regulation will sometimes become political issues and rent regulation can never be completely free of political influence.[3] Subject to that reservation, the Commission should set its own policies and practices. Specifically, it should not be subject to the bureaucratic supervision that would result from putting the Guidelines into regulations promulgated by Order in Council.

Nevertheless, the point is well taken that there should be consultation with interested organizations and parties and that the process of rule-making should be exposed to public scrutiny and debate.

Recommendation 6. **The policy of entrusting the Commission with the responsibility for formulating Guidelines to govern the interpretation and application of the *Residential Tenancies Act* should be continued, and Guidelines should not be replaced by regulations emanating from a ministry.**

Recommendation 7. **New Guidelines and material amendments to existing Guidelines should be circulated for comment to members of the public who have asked to be put on a mailing list and should be published in the *Ontario Gazette* before being promulgated by the Board of Commissioners. When material amendments are under consideration, the Board should convene a public meeting to hear oral submissions.**

Recommendation 8. **The *Interpretation Guidelines* should be declared to be authoritative, and the rules, directions, and interpretations they contain should be observed by the Commissioners. The Guidelines should be renamed Procedural Rules and Administrative Policies in lieu of Procedural and Rent Review Guidelines respectively.**

A difficult problem that the Commission has not dealt with is the effect that amendments to Guidelines will have on cases that are pending or already in progress. An example, is an amendment to Rent Review Guideline No. RR-4 that was released just before the introduction of the 1982 Interim Act, and that extended the time for the pass-through of financial loss from three years to five years. The amended Guideline was endorsed "Revised November 10, 1982, effective November 17, 1983", but there was no indication of how it would be applied to pending rent review applications. The Commission's intention, as revealed in evidence given to the Inquiry, was that the amendment would be applied in all cases pending before the Commission at the time the amendment was received by the Commissioner hearing the application. This is not the place to consider what directions the Commission should have given. The point is that it did not tell the public or the Commissioners how the amendment would affect cases that were pending or in progress. Careful thought must be given to the time at which amendments that will substantially affect the rights of the public are to take effect.

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[3] Political influence must be distinguished from political intervention in particular cases. There was no evidence that the latter has occurred or been attempted.

Recommendation 9. **Only in exceptional circumstances should a new Guideline or an amendment to a Guideline have retroactive application.**

Chapter 4

Scheme of Rent Regulation in Ontario

Rent Regulation in Ontario is an impersonal and mechanical operation in which the economic and social problems of the tenant and the landlord play no part. An amount of increased rent to which a landlord may become entitled under rent review is determined on the basis of the increased costs of the residential complex. In theory the system is one of limited rent increases, the control being the increases in the landlord's costs for the complex. Under the 1975 Act, the landlord could be required to justify any rent increase on the basis of the increased costs. Since 1979 that has not been the case with respect tc statutory increases. The system is criticized because it does not take into account the tenant's ability to pay or the landlord's return on his equity. The part those factors can or should play in a scheme of rent regulation will be studied in the second phase of the Inquiry. In 1975, however, the urgency of the problems in the residential tenancy market did not allow time for adequate study of those difficult matters, and under the circumstances the apparent simplicity of a cost-related system must have seemed a great advantage.

4.1 Yearly Rent Increases

An overriding principle of rent regulation is found in section 124 of the 1979 Act, which provides that "the rent charged for a rental unit shall not be increased more often than once in any twelve-month period."

Presumably the legislature did not intend that section 124 of the 1979 Act would change the policy regarding the interval between rent increases established under the 1975 Act. The accepted interpretation of section 124 is that twelve months must elapse between successive rent increases. An alternative reading of the section, however, appears possible. It is that there can be only one increase in each successive twelve-month period but that successive rent increases need not be twelve months apart. The two interpretations differ substantially. The section is ambiguous and it should be corrected. This Report assumes that the legislature intended a minimum twelve-month interval between rent increases, which is the interpretation accepted by the Commission.

4.2 Rent Control and Rent Review

The rent regulation system established in Ontario by the 1975 Act and continued by the 1979 Act combines two elements. A landlord whose residential complex is subject to the Act has the opportunity to choose the manner in which his rents will be controlled. He is free to increase the rents of any or all his rental units by not more than the statutory increase. The relevant provision of the 1979 Act is section 125:

> 125. Unless otherwise authorized under this Act, no landlord shall increase the rent charged for a rental unit by more than 6 per cent of the last rent that was charged for an equivalent rental period.

To impose a rent increase without applying to the Commission, the landlord is required only to give a Notice of Rent Increase[1] to the tenant occupying the unit in question at least ninety days before the effective date of the rent increase for an amount no greater than the statutory increase. This kind of rent regulation is referred to in this Report as "rent control". It is the subject of Chapter 6.

If, however, the landlord wishes to raise the rent charged for a unit by more than the statutory increase, he must give the tenant a Notice of Rent Increase for the intended amount and apply to the Commission for an order permitting him to raise the rent. He must, moreover, apply for a determination of the rents that may be charged for all the units in the complex. The relevant provisions of the 1979 Act are subsections 126(1), (2) and (3):

> 126.-(1) Where a landlord desires to increase the rent charged for a rental unit by more than the percentage referred to in section 125, he may apply to the Commission for an order permitting him to do so, whether or not the rental unit is the subject of a tenancy agreement at the time of application.
>
> (2) When the landlord applies to the Commission for an order under subsection (1), he shall, as part of the same application, apply for

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[1] Form 1, Notice of Rent Increase, is prescribed by Regulation 901 under the 1979 Act.

> a determination of the rents that may be charged for all of the rental units in the residential complex in which the units are situate when such units are rented or re-rented during the twelve-month period following the effective date of the first rent increase applied for, whether or not those units are the subject of tenancy agreements at the time of application.
>
> (3) An application under this section shall state the reasons for the intended increases and shall be made not less than sixty days before the effective date of the first intended rent increase that exceeds the percentage referred to in section 125.

In the marginal note this procedure is called "whole building review". In this Report it is also referred to as "whole building rent review" or simply "rent review" to distinguish it from "rent control". It is discussed in Chapter 7.

4.3 Time Periods

The scheme of whole building review is based on three distinct twelve-month periods. They are the rental unit year, the rent increase year, and the annual accounting period.

4.3.1 Rental Unit Year

In this Report, the twelve-month period commencing with the effective date of a rental unit's last rent increase is called the rental unit year. As previously noted, section 124 of the 1979 Act is interpreted to prohibit the landlord from increasing the unit's rent a second time during the rental unit year.

The rental unit year pertains to the unit, and not to the tenant or landlord. In fact, during a rental unit year there might be two or more tenants successively in occupation of the rental unit. There might also be two or more landlords if the residential complex in which the rental unit is situated is sold, but the rental unit year would not change.

Even if twelve months have elapsed since the last rent increase, the subsequent increase cannot take effect until a Notice of Rent Increase has been given under subsection 60(1) because subsection 60(2) stipulates that "an increase in rent by the landlord where the landlord has not given the notice required by subsection (1) is void." The notice referred to in subsection 60(1) is Form 1, which reads, "I hereby give you notice that the rent for the above rental unit . . . will be increased to $__________per______ *effective* the__________ of__________ 19___ . . . ." (emphasis added).

The rental unit year begins on the effective date stipulated in the Notice of Rent Increase. A Notice may be given during a rental unit year to take effect immediately upon the expiry of the year, or the landlord may delay giving a Notice, in which case the time between rent increases will be longer than twelve months. That does not mean that the rent can be raised at will during the extended period: before a rent increase can take effect, a Notice of Rent Increase must be given.

4.3.2 Rent Increase Year

Subsection 126(2) of the 1979 Act speaks of the twelve-month period following the effective date of the first increase applied for. In this Report that twelve-month period is referred to as the rent increase year.

The effective date of a rent increase is the date stipulated in the Notice of Rent Increase. Section 126 does not define the "first rent increase applied for" referred to in subsection (2) or the "first intended rent increase" referred to in subsection (3), but they are taken to be the same event.

An indication of the interpretation given to the phrase is provided by the Guide, which lays down the procedures to be followed by a landlord who applies for a rent increase. The Guide states (p. 2) that the landlord "must complete Form 2, Landlord's Application for Rent Review" (the Application).[2] Form 2 requires the landlord to state the "effective date of the first increase proposed in this application". The first increase proposed in the Application is taken to be the same as the first rent increase applied for and the first intended rent increase referred to in the statute. The Guide also stipulates that a detailed list containing specified information for each unit must be filed with the Commission along with the Application. Among the items of information required is the "effective date of [the] proposed rent increase."

The landlord can choose any date he wishes as the date for the rent increase for a unit, but it will not be effective unless he gives the tenant a Notice of Rent Increase. This is recognized by the Guide, which states that a landlord applying for a rent increase is " . . . still required to give a Notice of Rent Increase to each tenant . . . " (p. 1). The Guide evidently assumes that the rental unit years of the units in the complex will end at different times and that consequently Notices of Rent Increase given to the tenants will take effect on different dates. Therefore, the effective dates for some units will occur before those for other units following the date of the Application. The earliest date is the effective date of the first rent increase applied for, or of the first intended rent increase, depending on which section of the Act one has in mind.

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[2] Form 2 is prescribed by Regulation 901 under the 1979 Act.

The only purpose served by the rent increase year is to establish that an order or determination under subsection 126(2) cannot set rent increases to take effect in a later year.

4.3.3 Annual Accounting Periods

The Guide (p. 3) refers to three "annual accounting periods," viz: Year 1, Year 2, and the Projected Year. Year 2 and the Projected Year together are the time frame within which rent review operates. Year 2 is the current year at the time of the landlord's application for whole building review. The Projected Year is the next following year and is the year in which the landlord claims there will be cost increases over Year 2, which will entitle him to increase his rents. Year 1 is the year preceding Year 2.

Accounting years are not necessarily fiscal years for purposes of financial statements or taxes. Rather, they are set by the landlord to meet the exigencies of present and projected costs and financial losses. It should be borne in mind that it is the amount of the increase in costs in the Projected Year and financial losses suffered in Year 2 that are added into the rent for the Projected Year. The purpose of requiring a landlord to show Year 1 costs is to obtain a comparison of cost increases through the years, thereby establishing some basis for determining the validity of the projected cost increases for the Projected Year.

A landlord can make any number of whole building rent review applications, either annually or at longer intervals as he may see fit, but in any case the twelve months that constitute an accounting period for one application should prevail in the next application. That point is made in the Guide:

> Subsequent submissions for the same residential complex should be for the corresponding annual accounting period used in the previous submission unless the landlord can show good reason why he cannot comply. (p. 3)

There is no recognized terminology to be used in speaking of the situation that occurs when the Projected Year in an initial application for rent review becomes Year 2 in an application for the following year.

Nothing is expressly stated in the Interpretation Guidelines on the question of whether the Projected Year and the rent increase year should coincide.[3] There are, however, valid reasons for saying that they should. The former is the period for which cost increases are determined; the latter is the period during which cost increases and financial loss are translated into rent increases. If the rent increase year begins before the Projected Year, the effective date of the rent increase for at least some units will occur before the Projected Year's increased costs are borne by the landlord. Ideally, the cost increase and the revenue increase should occur simultaneously.

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[3] There is a statement in the Guide that "It is desirable that the annual accounting period selected should end as near to the effective date for the first rent increase applied for as is possible" (p. 3).

If, on the other hand, the rent increase year begins after the Projected Year has begun, the landlord will put himself in the position of being entitled, in the Projected Year, to rent increases that cannot become effective for some units for some time after the year has begun. It would appear that the orderly operation of the cost-pass-through approach to rent increases requires that the Projected Year and the rent increase year begin at the same time.[4]

4.4 Whole Building Rent Review

4.4.1 The Hearing Process

At a public hearing conducted by a single Commissioner, the landlord presents evidence and makes submissions to support a request for a total rent increase for all the units in the complex. The tenants in the complex are permitted to question the landlord's presentation and to make representations. Before the hearing, the landlord is required to file his Cost Revenue Statement containing relevant financial information regarding the complex. The Report recommends in Chapter 7 that, in the discretion of the Commission, a hearing may be preceded by a preliminary inquiry to ensure that all necessary evidence will be available at the time of the hearing.

The Act directs the Commissioner to adopt the most expeditious methods of settling questions that come before him, and it eschews technicalities by directing that the decision shall be upon the real merits and justice of the case.

4.4.2 Cost Pass-Through

As mentioned earlier in this Report, the scheme of rent review under the 1979 Act is sometimes referred to as a cost-pass-through system. That term, however, is somewhat misleading in its apparent simplicity. Essentially what happens at a whole building rent review hearing is that the landlord requests that certain costs and cost increases be determined and added to the total of the rents he is currently charging—the rent base—to constitute the maximum total rent he can charge for the units in the complex in the year ahead. There are a number of different types of costs.

Operating costs are straightforward, although on occasion there may be problems in determining both the present and the future amounts. They include taxes, insurance, heating, services, maintenance and ongoing repairs, and management and supervision. The net aggregate increase in these amounts from Year 2 to the Projected Year is carried into the calculation of the rent increase in the Projected Year.

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[4] See also the discussion of revenue surplus and deficiency in section 11.3.

The Guide regards unpaid and uncollectable rents as operating costs but does not regard losses due to vacancies as operating costs. It is recommended in section 9.2.3 that unpaid and uncollectable rents and losses due to vacancies should be incorporated into management and administrative overhead. Operating costs are discussed in section 9.2.

Capital costs are expenditures that include major repairs and improvements, replacement of equipment, and new installations, such as air conditioning or fire protection. Only a fraction of a capital expenditure is added to the rents in one year.

Financing costs are the principal and interest payments, together with ancillary costs and possibly exchange costs incurred in connection with the premises. The pass-through of increases in financing costs depends on circumstances that are discussed in section 9.4.

A financial loss occurs when the allowable costs for the complex exceed the revenue, which most frequently occurs as the result of the purchase of a building or complex. Capital costs, the pass-through of increases in financing costs, and financial loss are discussed in section 9.5.

Under the 1979 Act the Commission has a very broad discretion, which is fully exercised, to determine what costs and what part of a cost are allowed as additions to rent in the Projected Year. The Commission's powers in this regard have been challenged in the courts and have been upheld.

4.4.3 Apportionment of Rent Increase

After the total rent increase justified by the cost increases for the residential complex has been determined, the concluding step of the rent review process is to apportion the increase among the units and make an order setting the maximum rent that may be charged for each rental unit in the complex. Before December 1982 the apportionment was usually based on a rent schedule prepared by the landlord. A common practice was to apportion the increases among the units so that rents charged to similar units became more or less similar. That practice, referred to as equalization, was superseded by equal percentage apportionment pursuant to section 5 of the 1982 Interim Act. This matter is reviewed in Chapter 10 of this Report. It is there recommended that section 5 of the 1982 Interim Act be allowed to expire.

4.5 Whole Building Review Appeals

The Commissioner's order may be appealed by the landlord or the tenants to a panel of three Appeal Commissioners, who may affirm the Commissioner's order or substitute its own opinion for that of the Commissioner. An appeal on a question of law may be taken from the appeal panel to the Divisional Court. In the case of a tenant's appeal from a whole building rent review order, if some of the tenants are not involved initially, the Commission may add them as parties to the appeal. In Chapter 8, which discusses the appeal process, it is recommended that all tenants should be parties to any appeal of a whole building review decision and that the appeal panel's orders should determine the rents of all the units.

4.6 Tenants' Applications

Under the 1975 Act a tenant could dispute any rent increase for his unit, whether it was the statutory increase or an increase ordered by a Rent Review Officer; there was no restriction on the matters that could be raised for consideration at the hearing. Under the 1979 Act a tenant still has the right to dispute an intended statutory increase but the matters that can be considered by the Commission in disposing of the application are limited and do not include a review of the landlord's cost. Although the right to dispute a statutory rent increase remains in the 1979 Act, it is not of great significance because it does not extend to the matter of crucial importance. The tenant does, however, have a right under the 1979 Act that he did not have under the 1975 Act to apply for an order directing repayment of excess rent, referred to in a marginal note as illegal rent, and for an order declaring the rent that may lawfully be charged for the unit occupied by him. Tenants' applications are discussed fully in Chapter 12.

4.7 Enforcement of the Act

It appears to have been the legislature's intention that under the 1979 Act the Commission would not be responsible for enforcing the Act. The reason for this observation is two-fold. In the first place, the 1979 Act does not contain the sanctions that were found in the 1975 Act for non-observance of the basic features of rent regulation, namely, that rents could be increased only at yearly intervals and that a landlord could not increase the rents by more than the statutory increase or as permitted by a rent review order. Under the 1975 Act a breach of these requirements was an offence punishable by a fine. The omission of those sanctions from the 1979 Act could not have been inadvertent.

The second reason for suggesting that there was a change in the policy regarding enforcement is that the 1979 Act provides for a sanction that was not in the 1975 Act, namely, the tenant's right to apply for an order requiring repayment of excess rent increases. These important differences between the two Acts suggest that the enforcement of the 1979 Act is the responsibility of the tenants. In practice, however, the Commission over the past year and a half at least, has taken an increasingly aggressive attitude towards defaulting landlords. Chapter 13 discusses sanctions and enforcements.

4.8 Unrented Units

The interpretation of section 128 of the 1979 Act, which received much attention during the first phase hearings, has never been authoritatively settled. The section reads:

> 128. Where a rental unit that has not been rented during the previous twelve-month period then becomes rented, the rent then charged shall form the basis for determining whether subsequent rent increases exceed the percentage referred to in section 125, provided that the rent charged is comparable to the average rent charged for similar rental units in the residential complex.

The section is accompanied by the misleading marginal note "Where vacant unit becomes rented". A unit need not be vacant in order not to be rented; for instance, a unit may have been occupied by the landlord himself. Section 128 is the subject of Rent Review Guideline No. RR-9, but the Guideline leaves questions unanswered. The Guideline reads:

> The section provides that, if the unit has not been rented during the previous twelve months, the landlord may set a new rent without regard to the 6 per cent limit that would normally apply. However, if there are similar rental units currently being rented in the same residential complex, the rent must be set at a level comparable to the average rent charged for those units. This qualification would, of course, not apply where there are no similar units in the residential complex. Comparable rents in other complexes are not relevant. Once the new rent has been set, it will form the basis on which future permissible increases are calculated.

The statement that the "qualification," (perhaps limitation would be a better word) would not apply where there are no similar units in the residential complex implies that there is no limitation at all and the landlord could charge market rent. It appears from recent newspaper reports that this interpretation is to be tested by a landlord who deliberately is leaving, or has left, all the units in his complex vacant for twelve months and who, when he again begins to rent, will claim that there are no rents being charged against which the new rents can be compared and that hence he can charge what he pleases. It is doubtful that the legislature intended section 128 to be applied in that manner.

There are a number of reasons why a unit might not have been rented for twelve months. It may have been kept vacant deliberately, as in the situation mentioned above, or simply because no tenant did rent it. It is more likely that the drafters of the section had in mind the situation where the occupant, who might have been the landlord himself or a relative, did not pay or was not charged rent. The occupant would not be a tenant as defined in clause 1(1)(*s*) of the 1979 Act, and it would follow that the unit was not rented. If it had been rented, the landlord would have had an opportunity to raise the rent annually. The landlord, however, would not have given a Notice of Rent Increase to the occupant, if any, of the unrented unit, and in any event a Notice can be given only to a tenant. The result would be that technically the rent base would stay as it had been when the unit was last rented.

When the unit was again rented (or was rented for the first time if it had not been rented since the introduction of rent regulation), the question would be what rent should then be charged. Section 128 does not answer that question. It only says that the "rent then charged" shall be the basis for determining the amount of subsequent statutory increases, but it does not say what that rent should be. Section 128 in its original form in bill 163 did not include the proviso, and its application would have been purely prospective. The proviso was added to deal with the very question of what the rent then charged should be, but it can be argued that, on a literal reading, the proviso serves only to limit the application of the section to the case where the rent charged for similar units is comparable to the average current rent and does not actually say that the rent then charged shall be comparable. The latter meaning, however, is the way the proviso is interpreted by the Guideline.

The Guideline says that when a unit is rented after not having been rented for a period of more than a year, "section 128 allows the landlord to immediately bring the rent up to a level comparable to the average rent charged for the other similar rental units." In the practical examples given in the Guideline, the landlord charges as though statutory or ordered rent increases had been imposed during the unrented period. This is a desirable and valid policy, but it is doubtful that it is what section 128 accomplishes. If there is ambiguity in the language, it should be corrected.

If the intent of the section is that the rent base of a unit that has not been rented for a period of twelve months or more should be deemed to have kept abreast of the rent base of a unit that had been rented, it should be so stated.

***Recommendation 10.* Section 128 of the *Residential Tenancies Act* should be amended to provide that the rent base for a unit that has not been rented for the previous twelve months or more and then becomes rented shall be deemed to have risen as though the landlord had rented the unit during that time and had given Notice or Notices of Rent Increase for the statutory increase.**

This recommendation does not deal with the situation where the unit has never been rented since the inception of rent regulation. It would, however, meet the case where a landlord sought to avoid the effect of the section as it now reads by emptying the complex, or all comparable units, so that there would be no rents to which the new rents could be compared. In that situation, under a section amended as recommended, the new rent would be the previous rent plus allowable increases.[5] There would still be the question whether the previous rent was the lawful rent, and that is a matter the Commission would have to consider if it were called upon to declare whether the new rent was lawful.

4.9 New Units

If, however, the unit has never been rented, either because it has never been occupied by a rent-paying tenant since rent regulation was introduced or because it is located in a structural addition to the complex, such as a new wing or new floor, the landlord should be allowed to charge market rent.

***Recommendation 11.* Where a rental unit is rented for the first time since the inception of rent regulation, or where a new unit in a structural addition to a complex containing rental units subject to rent regulation is rented for the first time, the landlord should be allowed to charge market rent for such a unit the first time it is rented. The rent charged would become the schedule rent.**

4.10 Renovated Units

Rent Review Guideline No. RR-9 interprets section 128 as being applicable to units that have been renovated to such an extent that they should be regarded as new units. The Guideline reads:

> If the renovations are so substantial as to effectively create a new rental unit, the unit would become "a rental unit that has not been

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[5] The recommendation is consistent with the base year review concept recommended in section 11.1.

> rented during the previous twelve- month period", within the meaning of section 128 . . . .
>
> . . . section 128 will only apply to a renovated unit if the renovations effectively create a new rental unit. The determination of this issue will depend on the particular facts of each case. Major structural alterations will often have the effect of creating new units. For example, the conversion of a large two bedroom apartment into two small one bedroom apartments would create two new units. However, the creation of a new unit may not necessarily require structural changes. A significant change in the character of a unit could be sufficient to justify treating the unit as new.

The Guideline is an attempt to deal with a situation that is not covered by the statute. In doing so, it gives a meaning to section 128 that is not apparent on its face. Section 128 appears to be directed to the simple case of an unrented unit that is rented again after a period of time. When a unit, however, is renovated to such an extent that it is transformed into a new unit, obviously the former unit no longer exists and cannot again be rented. What is needed is a statutory provision directed specifically to the consequences of renovation.

Renovations may be made to a single unit in a complex, to several units, or to all the units. Whatever may be done, the landlord is seeking to improve the revenue potential of his property, and under the prevailing scheme of rent regulation, he should be able to pass through the costs of renovating. If all the units are renovated, the rent base to which these costs would be added would be the rent base for the whole complex; otherwise it would be the rent base of the particular unit or units that have been renovated. It should not be necessary to decide whether a new unit has been created. The costs of the renovation would be added to the rent base of the renovated units. This could be done by way of a whole building review application, but if only a few units were involved, fairness would require that only the rents of those units that benefited from the renovation should be increased to cover the cost. That would not be possible, however, under the present regime of equal percentage rent increases as required by the 1982 Interim Act if an amortized capital cost allowance can only be included as a cost increase as part of a permitted total increase. Elsewhere in this Report it is recommended that that provision of the 1982 Interim Act be allowed to expire. A statutory provision dealing specifically with a new unit as defined above is needed.

***Recommendation 12.* The rent base for a unit in a residential complex that has been wholly or partially renovated should be set by reference to the capital cost of the renovations plus the rent base of any previously existing rental unit occupying the same space.**

Chapter 5

The Rent Base

Rent review, as laid down in section 131 of the 1979 Act, is the process of determining a total rent increase for a residential complex for the year that lies ahead, of apportioning that increase amongst the rental units in the complex, and of determining the maximum rents that may be charged for the units in that year. Nothing is said in the legislation, however, about the base to which the apportioned amount of a permitted rent increase or a statutory increase is added in order to arrive at the maximum rent that may be charged for a unit. In practice, the maximum monthly rents from the units in the complex are calculated in accordance with directions in item 17 of the Guide. These directions are quoted below with added comment to make them more understandable to anyone not familiar with the practice.

> The new monthly rent revenue of the residential complex will be the lesser of [the] sum of [the] current monthly rents charged by the landlord plus 1/12 of the total justified increase . . . or the monthly rent proposed. [The latter amount is the amount requested by the landlord in his Application for Rent Review.] Present monthly rent means the rent charged for the calendar month immediately preceeding the effective date of the first proposed increase applied for in [the application for whole building review] . . . .
>
> When the total of the new justified monthly rent has been determined it shall be apportioned equally amongst the rental units of the residential complex on a percentage basis. [This is as required by the 1982 Interim Act.]

> The rent increase will be calculated as follows:
> The lesser of:
>
> Monthly Rent Increase Justified
> or Proposed Monthly Increase
> ________________________ x 100 = %
> Total Present Monthly Rent as Accepted by Commission.
>
> The present monthly unit basic rents and all separate charges will be increased by this percentage to establish the new maximum monthly rents which may be charged. (pp. 9-10)

The Guide does not say how the "total present monthly rent as accepted by the Commission" should be determined. It would appear to be the same amount as the "present monthly unit basic rent", and for convenience in this Report it is referred to as the rent base. How this amount might be determined is dealt with in Rent Review Guideline No. RR-13, entitled "Treatment of Illegal Rents in a Landlord's Application for Rent Review". The Guideline reads:

> An essential step in considering a landlord's application for rent review is the determination of existing rents in the residential complex [referred to in the Guide as present monthly unit basic rent]. The amount by which the landlord's costs will increase is then determined and added to the existing rents.
>
> The rents currently charged, however, may in some circumstances exceed those that are permitted by the rent review legislation. The purpose of this Guideline is to consider how these illegal rents should be treated in a landlord's application for rent review.
>
> A Commissioner may conclude that rents currently charged are illegal on the basis of several forms of evidence. When the landlord applies for rent review, Commission staff should check to see if the residential complex has been the subject of previous rent review orders (either expired or currently in force). If previous orders were issued, calculations should be made to determine what the current lawful rents should be. If there appear to be any discrepancies between these rents and the existing rents set out in the landlord's Detailed List of Proposed Rents, the matter should be raised at the hearing, with all parties given an opportunity to make submissions. In some cases it may be necessary to permit an adjournment to enable the landlord to bring in evidence aimed at contradicting the apparent discrepancies.

> If the residential complex has never been the subject of a rent review order, the Commissioner will have to rely on the parties to present evidence intended to prove the existence of illegal rents. The Commissioner will have to consider this evidence and determine whether the existing rents are legal and, if not, what the lawful rents should be. If none of the parties objects to the existing rents set out in the landlord's Detailed List of Proposed Rents [referred to in the Guide as the "monthly rent proposed"], however, the Commissioner is entitled to accept them as correct.

The Guideline is unsatisfactory, for it does not say what calculations should be used to determine the current lawful rent. The phrase "current lawful rent" would seem to be another way of saying "total present monthly rents as accepted by the Commission". It is apparent from reading the decisions of Commissioners on rent review applications that practices have grown up with regard to those calculations, but nowhere are they described. If the landlord and the tenants are not familiar with those practices, they will have no way of foreseeing what reduction the Commissioner may make to the current rents, whether the reduction is more or less than it should be, and whether they are being treated in the same way as the landlord and tenants in other complexes. The method of determining the base rents should be clearly described in some authoritative way.

Whether the Commissioner in every rent review application should be required to calculate the rent base for each of the units in the prescribed manner is a matter that would have to be left to his discretion. If he is satisfied that the landlord's proposed monthly rents are not out of line and the tenants make no objections to them, it would be reasonable to accept the landlord's figures. It must be borne in mind that an order of the Commission setting maximum rents establishes the base for future rent reviews and precludes any subsequent review of those figures.

If, however, upon receiving an application for rent review, the Commission is made aware by complaints from tenants that excessive rents may have been charged, or if for any other reason it is of the opinion that it should calculate the base rents rather than use the landlord's figures, it should do so in the manner described in Chapter 17 for determining schedule rents. The Commission should require the landlord to file with his Cost Revenue Statement a rent schedule showing schedule rents. The schedule rents would be the rent bases for the units. The rent base schedule should be available for review at a preliminary inquiry.[1]

There can be situations where the landlord is charging less than the base rent determined in the manner suggested above. This could occur because the landlord had given a Notice of Rent Increase of less than the statutory increase on some occasion. It could also occur because the landlord chose to forgo temporarily some part of the rent he was entitled to charge. He might have done so because the tenant was in financial distress and it was agreed that the rent would return to its former level when the tenant's financial position had been restored. Or the landlord might have chosen to rent a unit at a reduced rate rather than have it stand vacant. In either case, the base rent should be the schedule rent.

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[1] Preliminary inquiries are recommended in section 7.2.2.

Counsel for the landlords' interests used the phrase "paper base", which corresponds to the rent base discussed in this chapter. He said:

> I think the whole purpose of the paper base is this . . . to maintain a base on his [the landlord's] rent which is in accord with what he could be legally entitled to charge, although he can't collect. (Transcript, Sept. 7, 1983, p. 76)
>
> And so long as the [rent for the] unit stays within certain parameters of the legislation, then the landlord should be able to collect that amount. Not retroactively if he can't get it, but he should be able to catch up. (Ibid., p. 85)

Counsel for the tenants' interests put the matter this way:

> We have no difficulty with the concept that if a landlord, despite being ordered one particular rent for whatever reason decides to rent out at a lower level, we have no difficulty with him when he gets an increase in the next year applying that to the base rent that he was previously ordered . . . . So, as long as the ordered rent from the previous year remains the maximum chargeable rent on the unit, we have absolutely no difficulty with the landlord coming and saying, well . . . I didn't really charge that, but since that was my legal base rent, that's what I want to apply my increase to. (Transcript, Aug. 26, 1983, pp. 16-17.)

If the rent base were maintained during periods when the landlord was collecting less rent than he was entitled to, it would relieve landlords from having to engage in legal stratagems to achieve the same result.

The relationship between the rent base of the unit and the tenant's rent obligation takes several forms. Presumably the most common situation is that the rent the landlord and tenant agree upon explicitly or by operation of law under subsection 60(1) is the full amount that can be charged for the unit.

As already mentioned, however, the landlord may have agreed to accept a lesser amount. While this arrangement is in force, the current rental unit year may terminate and the landlord may wish to protect the rent base for the unit by giving a Notice of Rent Increase for the statutory increase. The question would be whether the statutory increase should be calculated on the rent base or on the lesser amount the tenant was paying. If calculated on the rent base, the rent increase would be greater than 6 per cent of the rent being paid by the tenant and hence could be regarded as an infraction of section 125.

This is a matter on which counsel commented, as quoted above. The logical position is that the statutory increase should be charged on the rent base. If there is a possibility of misunderstanding on the point, it should be clarified. If, however, a landlord has reduced the rent below the rent base, he should be subject to the restraints of sections 124 and 125 with respect to increasing the rent to be paid by the tenant, unless it was agreed with the tenant in writing at the time of the reduction that the rent could be raised without regard to those restraints and, if so, when and to what extent. The rent could not, of course, be raised above the rent base.

A different situation would occur if a unit occupied by a tenant who was paying less than the rent base became vacant. In that case the landlord should be free to rent the unit to a new tenant for an amount up to the rent base without being in breach of sections 124 and 125. Such a provision would permit the repeal of subsection 134(3), which reads:

> 134(3) Where a landlord, by reason of the existence of depressed economic conditions in a local municipality, designated by order of the Minister, reduces a tenant's rent, and thereafter, not sooner than twelve months after the reduction took effect, desires to increase the rent, the landlord may increase the rent to,
>
> (*a*) the maximum rent that could have been charged by the landlord for the rental unit at the date of the intended increase without applying to the Commission under section 126 had the rent not been decreased; or
>
> (*b*) the current maximum rent previously established by the Commission on an application made under section 126.

Recommendation 13. **The rent base to which a statutory or permitted rent increase is added should be schedule rent as defined in Chapter 17 of this Report.**

Recommendation 14. **Where the rent paid by a tenant is below schedule rent, the rent base for the unit occupied by the tenant should not be reduced.**

Recommendation 15. Any increase in the rent payable by a continuing tenant who is paying less than schedule rent should be subject to the restraints imposed by sections 124 and 125 of the *Residential Tenancies Act.*

Recommendation 16. A written agreement between a landlord and tenant that calls for a temporary reduction in the rent paid by the tenant and a subsequent increase to the original rent level should not give rise to an infraction of sections 124 and 125 of the *Residential Tenancies Act.*

Recommendation 17. Where the rent paid by a former tenant has been less than the schedule rent, the rent payable by an incoming tenant may be increased to the schedule rent without giving rise to an infraction of sections 124 and 125 of the *Residential Tenancies Act.*

Recommendation 18. Subsection 134(3) of the *Residential Tenancies Act* should be repealed.

Chapter 6

Rent Control

The Inquiry is not aware of any authoritative explanation for the policy of combining statutory rent control with rent review in a system of rent regulation. It may have been thought that a statutory rent increase that could be charged without obtaining permission from the regulatory authority would meet the requirements of most landlords, thereby precluding a flood of applications that would overburden the review process and make rent regulation unworkable. To have the intended effect, however, the statutory increase would have to be at least high enough to cover landlords' increases in operating costs caused by inflation. It is probable that most landlords' operating costs rise in relation to revenue at pretty much the same rate. Those landlords who needed additional revenue to meet increases in their costs for capital expenditures or a financial loss resulting from the purchase of the complex would have to obtain larger rent increases through the rent review process.

Whether or not the primary reason for the statutory increase was to forestall an excessive number of rent review applications, that has been its effect. It is estimated that, since the introduction of whole building review in 1979, there have been applications for ordered rent increases for fewer than 15 per cent of the controlled rental units in any one year. This level of participation could be taken as an indication that the 6 per cent rate may be about right. There are, however, arguments against that conclusion. For one thing, the degree of compliance is not known. Among landlords there is a strongly held opinion that the statutory increase has been too low to meet the increases in their costs and to maintain the profitability they consider they are entitled to. Consequently, some landlords have ignored the 6 per cent limit and charged higher rents without seeking permission from the Commission.

TABLE 1: Inflation and the Statutory Increase

Year	CPI Index (1)	CPI Percentage Increase (2)	Statutory Percentage Increase (3)	Ratio of Column 3 to Column 2 (4)
1974	52.8	10.92		
1975	58.5	10.80	8	0.74
1976	62.9	7.52	8	1.06
1977	67.9	7.95	8	1.01
1978	73.9	8.84	6	0.68
1979	80.7	9.20	6	0.65
1980	88.9	10.16	6	0.59
1981	100.0	12.50	6	0.48
1982	110.8	10.80	6	0.56
1983	117.2	5.78	6	1.04
				Average annual ratio 0.75

No effort has been made by the Commission or any government authority to discover to what extent landlords are complying with the rent increases permitted by the statute. Nor is it clear to what extent tenants have accepted excessive rents willingly or otherwise. Even if 8 per cent was an appropriate rate for 1975-76 and 6 per cent was suitable in 1977-78, it is evident that the statutory rate of increase fell significantly in relation to the rate of inflation during the late 1970's and the early part of this decade. There is no inflation index for landlords' costs, but the Statistics Canada Consumer Price Index, all items (CPI) is probably as good an indication as any of how the residential market was affected. The figures for the decade 1974-83 are shown in Table 1.

It may be noted that when both the 8 per cent rate and the 6 per cent rate were introduced in November 1975 and October 1977 respectively, they were approximately 0.75 of the previous year's inflation rates. And the average annual ratio between the statutory rate of increase and the inflation rate has coincidentally been 0.75, although the ratio has differed significantly from that proportion in several years.

Recommendation 19. **The maximum permitted rent increase that may be made without application for whole building rent review (the statutory increase) should be set annually in accordance with a fixed ratio established between the rate of increase in a cost inflation index relevant to landlords' costs and the rate of the statutory increase.**

Chapter 7

Whole Building Rent Review

7.1 Application Procedures

7.1.1 Notice of Rent Increase and Application for Rent Review

A landlord can increase the rent of a rental unit that is subject to the rent regulation provisions of the Act only by proceeding in conformity with the requirements of the Act. Whether he keeps the rent increase within the 6 per cent statutory increase or seeks a larger increase from the Commission, the ninety-day Notice of Rent Increase must be given pursuant to section 60 of the 1979 Act.[1] (The Notice of Rent Increase is Form 1 prescribed by Regulation 901 under the 1979 Act.) If the intended rent increase is greater than the statutory increase, sections 125 and 126 of the Act require the landlord to apply to the Commission for an order permitting a total rent increase for the residential complex. The landlord's application is made on a form prescribed by Regulation 901 under the 1979 Act called "Form 2: Landlord's Application for Rent Review". Section 125 and the relevant subsections of section 126 read as follows:

> 125. Unless otherwise authorized under this Act, no landlord shall increase the rent charged for a rental unit by more than 6 per cent of the last rent that was charged for an equivalent rental period.
>
> 126.-(1) Where a landlord desires to increase the rent charged for a rental unit by more than the percentage referred to in section 125,

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[1] Section 129 of the *Landlord and Tenant Act* R.S.O. 1980, c. 232 also requires a Notice of Rent Increase to be given. The provisions of section 60 of the 1979 Act and section 129 of the *Landlord and Tenant Act* are to all intents and purposes identical. Further discussion of the duplication will be found in section 7.7.

he may apply to the Commission for an order permitting him to do so, whether or not the rental unit is the subject of a tenancy agreement at the time of application.

(2) When the landlord applies to the Commission for an order under subsection (1), he shall, as part of the same application, apply for a determination of the rents that may be charged for all of the rental units in the residential complex in which the units are situate when such units are rented or re-rented during the twelve-month period following the effective date of the first rent increase applied for, whether or not those units are the subject of tenancy agreements at the time of application.

(3) An application under this section shall state the reasons for the intended increases and shall be made not less than sixty days before the effective date of the first intended rent increase that exceeds the percentage referred to in section 125.

7.1.2 Revision of Form 1: Notice of Rent Increase

Form 1 should be revised when used to give notice of a rent increase greater than the statutory increase. When a landlord desires a rent increase greater than the statutory increase, he cannot, as required by Form 1, set out the dollar amount of the increase because it has not yet been determined. This is recognized by section 133, which prescribes the amount of rent a landlord may collect "until such time as the Commission's order setting the maximum rent that may be charged for the rental unit takes effect." Subsection 60(1) of the 1979 Act and Form 1, as they now read, are applicable to rental units that are not subject to rent regulation and to controlled units where the intended increase will not exceed the statutory increase. The statutory provision and Form 1 need to be amended and supplemented to deal with an intended rent increase for a controlled unit that is greater than the statutory increase. A new form, to be known as Form 1A, might be worded along the following lines:

1. I intend to apply to the Residential Tenancy Commission for permission to increase the total rents for the complex in which the above rental unit is situated by $ ________, being ______ per cent of the present rents.
2. The Commission may determine a total rent increase of a lesser amount.
3. The increase will be apportioned equally among the rental units on a percentage basis.[2]

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[2] The language of the section of the Act and of the form will have to be revised if the mode of apportionment of a total rent increase reverts to allowing equalization.

4. The rent increase requested for the above rental unit is $______________ but may be less, depending upon the amount of the total increase permitted.
5. The effective date of the rent increase will be the____day of______, 198__.
6. The new rent requested will consist of: [breakdown as in Form 1].

***Recommendation 20.* A new form (Form 1A) should be prescribed for use when a Notice of Rent Increase in excess of the statutory increase is given.**

7.1.3 Revision of Form 2: Application for Rent Review

Form 2 should be revised to conform to the scheme of the 1979 Act, namely, that the initial step in an application for rent review is the determination by the Commission of a total rent increase and the second step is the apportionment of that total rent increase amongst the rental units. At present, Form 2 refers to section 126 of the Act, which in subsection (2) requires the landlord to "apply for a determination of the rents that may be charged for all of the rental units in the residential complex . . . ." Form 2 instructs the landlord to submit a proposed rent schedule containing information on the types of units in the complex, the number of units within each type, and a proposed range of monthly rents for each type. Why that information is requested is not clear, since it does not include (i) the total rent increase requested, (ii) the total of rent for all the units or the rents currently being charged for all the units, or (iii) the rent proposed for each unit. This is information required for a whole building rent review order under subsection 131(5); it should be provided and a reference to subsection 131(5) should be added to the form.

***Recommendation 21.* Form 2, which is prescribed for use by a landlord when applying for whole building review, should be revised to conform to the scheme of the *Residential Tenancies Act*.**

7.1.4 Giving of Notice and Application to Tenants

Both a Notice of Rent Increase and a copy of the Application for Rent Review should be given to the tenants at least ninety days before the first effective date of the intended rent increases. The methods by which a document may be sufficiently given are set out in subsection 99(1) of the 1979 Act.

> 99.-(1) Where this Act permits or requires a notice or document to be given to a person, the notice or document is sufficiently given by,

(*a*) handing it to the person, or
  (i) where the person is a landlord, to any employee of the landlord exercising authority in respect of the residential complex, or
  (ii) where the person is a tenant, sub-tenant or occupant, to an apparently adult person in the rental unit;
(*b*) leaving it in the mail box where mail is ordinarily delivered to the person; or
(*c*) sending it by mail to the address where the person resides or carries on business.

***Recommendation* 22. A Notice of Rent Increase and an Application for Rent Review that have been sufficiently given under subsection 99(1) of the *Residential Tenancies Act* should have their legal effect notwithstanding that they may not have come to the attention of the tenant to whom they are addressed.**

7.1.5 Notice of Rent Increase to Accompany Application

The 1979 Act does not specifically state that the application to the Commission for permission to increase the rent must be preceded by Notices of Rent Increase to the tenants. Nevertheless, for reasons given in this chapter, the position taken in this Report is that the Act should be so read and applied. This interpretation is contrary to that of the Commission. If necessary, the 1979 Act should be amended to remove any uncertainty.

The position taken by the Commission was reviewed at some length in the evidence given by an official of the Commission to the Inquiry; it was that a Notice of Rent Increase is not a preliminary procedural requirement for an order permitting a rent increase. The arguments advanced by the witness appeared to be as follows: (i) if it were a procedural requirement, the Commission should have been given the authority to consider the validity of the Notices, and (ii) there is no requirement to have served even a single Notice of Rent Increase before making an application under section 126. (See Transcript, July 26, 1983, p. 167.)

The first argument may stem from the fact that, unlike the 1975 Act, the 1979 Act does not specifically give the Commission the authority to review the validity of Notices of Rent Increase. Subsection 7(3*a*) of the 1975 Act, which was added in 1977, required a Rent Review Officer who was hearing an application by a landlord for a rent increase to "... satisfy himself about the sufficiency of any notices under subsection 1 of section 115 of *The Landlord and Tenant Act* ... ." (Section 115 is now section 129 of the *Landlord and Tenant Act* R.S.O. 1980 c. 232.) Subsection 7(3*a*) continued "... no order of the Rent Review Officer shall be effective unless the notices as required are sufficient."

Certainly the 1979 Act does not contain a comparable provision, but the jurisdiction of a Rent Review Officer under the 1975 Act was much narrower than the jurisdiction of the Commission under the 1979 Act. A Rent Review Officer was empowered only to hear and, if he saw fit, to approve an application for a rent increase. The giving of Notices of Rent Increase was not required by the 1975 Act, but it was a requirement under the *Landlord and Tenant Act*. When it appeared that a Rent Review Officer might not have the authority to rule on the validity of something required under *The Landlord and Tenant Act*, subsection 7(3)*a* was added to the 1975 Act.

The Commission, however, is directed to administer the 1979 Act (clause 81(*a*)), and that Act, as it was declared in force, includes section 60, which requires that a Notice of Rent Increase be given or the increase will be void. It would seem reasonable to hold that the giving of valid Notices of Rent Increase under section 60 is a procedural requirement for a rent review application under section 126 and that the Commission would have the inherent jurisdiction to determine whether this had been done. The position taken here is that the Commission should determine whether or not Notices of Rent Increase have been given; if there is doubt as to the Commission's jurisdiction, the situation should be clarified.

In the second line of argument advanced on behalf of the Commission with regard to whether Notices of Rent Increase are a preliminary procedural requirement, section 130 of the 1979 Act appears to be relevant, although the witness did not refer to it. The section reads:

> 130. Where under section 126 a landlord applies to the Commission for a determination of the rents that may be charged for all rental units in a residential complex, the Commission is empowered to hear the application and to determine the rent that may be charged for each rental unit despite the fact the landlord may not have, in respect of any rental unit, given notice under section 60 (notice of rent increase), but nothing in this section relieves the landlord from compliance with section 60.

This Report is not the place in which to engage in legal arguments as to the meaning of the legislation, but it may be said that section 130 is ambiguous. The witness seems to have interpreted it as meaning that the Commission may proceed with a rent review hearing even if the landlord has not given any Notices of Rent Increase at all. An alternative meaning, which is preferred in this Report, is that the Commission may proceed despite the fact that the landlord may have failed to give a Notice for every unit. That is to say, the section is a relieving provision that permits an application to proceed even though, through error or inadvertance, a tenant, or possibly even several tenants, have not been given a Notice of Rent Increase. The wording of the section is permissive, and if a landlord sought to make an application for a rent review hearing, having given no Notices of Rent Increases or only one or two token Notices, it would seem to be open to the Commission not to proceed with the hearing.

The matter of the interpretation of section 130 will not be pursued further. The position taken in this Report is that the tenants should be given Notices of Rent Increase before, or at least at the same time as, they are given copies of the Landlord's Application for Rent Review.[3] There are a number of reasons for recommending this procedure:

1. The Commission will thereby be assured that it is being asked to make an order that will become effective and that is not conditional upon some action that the landlord may or may not take.

2. The Commission will be given the effective dates of the rent increases by the landlord's application and will therefore be able to set the dates when the rents it orders may take effect, as directed by clause 131(5)(*a*).[4]

3. Notices of Rent Increase are directed to the tenants and inform them of the prospective rent increases. The Application for Rent Review may indirectly serve that purpose but will not necessarily do so in every case. When an application is made, the tenants should be informed personally of how their rents will be affected and how they can oppose the application.

4. An application for rent review must be made not less than sixty days before the effective date of the first intended rent increase. The effective dates of rent increases are set by the Notices of Rent Increase. Until the Notices are given, the first date cannot be determined and therefore a valid application cannot be made. The requirements of the statute can be met by giving the Notices of Rent Increase before, or at the same time as, the application is made to the Commission.

5. The Commission itself in the Guide seems to take the position that the Notices of Rent Increase will have been given before, or at the same time

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[3] Subsection 98(1) reads:

> 98.-(1) Where a landlord makes an application to the Commission, the landlord shall promptly give a copy of the application to any tenant, sub-tenant or occupant who, at the time the application is made, is directly affected by the issues raised in the application.

[4] See in this regard the discussion of effective date of rent increase in Chapter 4.

as, the application is made. Under the heading "Application and Detailed List of Proposed Rents", it is said:

> 1. A landlord wishing to make an application for an increase greater than 6% must complete Form 2, Landlord's Application for Rent Review, and file it with the local office of the Residential Tenancy Commission not less than 60 days before the effective date of the first proposed increase . . . .
>
> 2. A detailed list containing the following information, for each unit, must be filed by the landlord with the Commission, along with the application:
>
> -unit number
> -type of unit
> -tenant name in full
> -present monthly basic rent
> -present monthly separate charges
> -effective date of last rent increase
> -proposed monthly basic rent
> -proposed monthly separate charges
> -*effective date of proposed rent increase* [emphasis added]
>
> To aid the landlord in submitting this information, the Commission has designed a Detailed List of Proposed Rents, Form 2A. A copy of Form 2A must be given to all tenants or made available in a convenient place for examination by tenants at reasonable hours. (Guide, p. 2)

6. If Notices of Rent Increase are given to all the tenants at the same time and are subject to scrutiny by the Commission, the tenants are dealt with on the same basis. The matters of concern to the Commission would be whether the Notices had been properly completed in the prescribed form and whether they had been given in accordance with the provisions of section 99 of the 1979 Act. On the basis that the giving of Notices of Rent Increase is a preliminary procedural requirement to a rent review hearing, the foregoing are matters that go to the jurisdiction of the Commission and should be so prescribed.

It would probably not be too time-consuming or difficult to check the prescribed matters, even in the case of the larger complexes. The 1979 Act states quite specifically that the Notices must be given. Since a landlord must know what rent increases he is requesting for each unit in the complex in order to complete the Application, he will have the information necessary for giving Notices for all units at the same time as he gives copies of the Application. Furthermore, the landlord's decision to apply for whole building review must precede the giving of the Notice for the first effective increase; hence, he will know the requested rent increases for all the units before he gives the first Notice. Consequently, it is reasonable to require the landlord to give all Notices of Rent Increase and copies of the Application not less than ninety days before the first effective increase.

7.1.6 Filing of Notice and Application with the Commission

The timing and co-ordination of the events leading to the rent review hearing before a Commissioner are crucial. Ideally, the hearing and the release of the rent-setting order resulting from it should be completed before the first date on which rent increases will take effect, but that is not always feasible.[5] The intent is to devise a procedure that will ordinarily lead to the release of a rent order, if not at the beginning of, at least reasonably early in, the Projected Year, which is also the rent increase year.

The Commission's responsibilities should begin when a landlord files with it the Notices and an Application accompanied by a statutory declaration stating when and how the documents were given to the tenants. It should be feasible for the landlord to complete that step within fourteen days of the date of the Notice and Application.

The possibility must be considered that a landlord may be late in filing the documents with the Commission or may not file them at all. If a landlord wishes to make a late filing, he should be required to obtain permission from a Commissioner. If the Commissioner gives permission, he should extend the time for the subsequent steps in the review process and postpone the effective dates of rent increases. No application for acceptance of a late filing should be entertained after the first effective date of the rent increases that are being applied for.

If the landlord does not file the documents at all, or if he does not receive permission for a late filing, the tenants will believe that their rents are being raised, but the Notice will not be followed by an order setting the rents. That situation should be dealt with by amending section 133, which, as it reads, is not suitable for that purpose:

> 133. Where a notice of an intended rent increase has been given under section 60, a rent increase up to the lesser of,
>
> (*a*) the intended rent increase specified in the notice; and
>
> (*b*) the limit imposed by section 125, may be charged and collected by the landlord until such time as the Commission's order

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[5] This ideal situation is particularly desirable when all or most of the rental units in a complex have a common anniversary date, that is to say, when all the rent increases will take effect on the same date.

> setting the maximum rent that may be charged for the rental unit takes effect.

***Recommendation 23.* Section 133 of the *Residential Tenancies Act* should be replaced by a section to the following effect:**

> **133. A Notice of Rent Increase for an amount greater than the limit imposed by section 125 of the *Residential Tenancies Act* shall be deemed as well to be a notice for an amount that section 125 permits a landlord to charge without an Application for Rent Review, and that amount may be charged and collected by the landlord until such time as an order by the Commission setting the maximum rent that may be charged for the rental unit takes effect.**

The prescribed form of the Notice of Rent Increase should include a statement informing the tenants of the effect of section 133 as revised.

7.1.7 Acceptance of Filing by Commission

If the documents received by the Commission are incomplete, or if it is apparent on the face of the material that the Notice and Application have not been sufficiently given to all the tenants in accordance with section 99(1), the landlord should be notified and given an opportunity to correct the deficiencies.[6] The decision to accept the filing as satisfactory or to give directions for remedial action should be made by a Commissioner. Before refusing a filing, the Commission should first notify the landlord of its intentions. If the deficiencies in the Notices or Application or in the giving of the documents to the tenants have not, in the opinion of the Commission, been remedied at least sixty days before the first effective date of increase, the Commission should have the discretion (i) to refuse the filing or (ii) to give the landlord additional time to correct his filing, in which event the first effective dates of increase should be postponed as required to maintain sufficient lead time for the first effective rent increase. If the filing is refused outright, the landlord should be permitted to withdraw his application on such terms as the Commission may set, as discussed in section 7.1.11. If the landlord does not formally seek to withdraw the application, the Notices of

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[6] In this regard, see section 121:

> 121. Substantial compliance with the requirements of this Act respecting the contents of forms, notices or documents is sufficient unless the Commission is of the opinion that it would result in unfairness to any person.

It will be observed that this section relates only to content and not to the mode of giving, which should comply strictly with the Act.

Rent Increase will take effect as 6 per cent Notices since it will be considered that no application has been made.

The decision of the Commission to accept a filing would be final. Except for special and extraordinary reasons, objections to the acceptance of the filing should not be entertained at the whole building review hearing.

7.1.8 Commission's Notice to Tenants

The tenants should be notified individually by the Commission as soon as Notices of Rent Increase and Application for Rent Review have been accepted for filing. If there are delays in accepting the Notice and Application, the tenant should be given at least seven days' notice before the date when the Cost Revenue Statement is due to be filed by the landlord.[7] The notice to the tenants from the Commission should also:

1. Give the date when the landlord's Cost Revenue Statement and substantiating material are due to be filed with the Commission.

2. Specify a place and times at which the Cost Revenue Statement and substantiating material will be available for inspection by tenants and their representative or representatives.[8]

3. Give the date, time, and place of the hearing of the application.

4. Request the tenant that if he does not plan to attend personally at the hearing, to inform the Commission by whom he wishes to be represented; and in that case send the Commission the form of authorization attached to the notice. Subsequent procedural notices should be sent to both the tenant and his representative.

7.1.9 Commission's Notice to Landlords

The landlord should be notified by the Commission as soon as the Notice and Application have been accepted for filing. The notice to the landlord should:

1. Notify the landlord that his Application has been accepted for filing.

2. Inform the landlord of the date on which his Cost Revenue Statement is due to be filed and point out that, if he delays in filing the Statement or files an incomplete Statement, the outcome of his application may be prejudiced.

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[7] See section 7.2.1 for a discussion of the time limits for filing the Cost Revenue Statement.

[8] Section 94 of the Act reads:

> 94. The offices of the Commission shall operate at times convenient to the public, including, where appropriate, evenings, statutory holidays and week-ends.

3. Inform the landlord with regard to substantiating material that should be filed with the Cost Revenue Statement.

4. Inform the landlord of the date, time, and place of the hearing of the application.

7.1.10 Withdrawal of Notice of Rent Increase

A question that received attention during the Inquiry is whether a landlord can withdraw a Notice of Rent Increase. The answer will turn on the circumstances under which the Notice is given. If the Notice is for the statutory increase (or less), the matter has been dealt with by the Divisional Court in re Cando Property Management and Wilson (1983, 44 O.R. (2d)).

If a landlord wishes to withdraw a Notice of Rent Increase greater than the statutory increases, the matter then becomes one of withdrawing the Application for Rent Review that must follow or accompany the Notice of Rent Increase. If the Application is not proceeded with but is not withdrawn, the Notice of Rent Increase would be treated as a Notice for the statutory increase under amended section 133.

7.1.11 Withdrawal of Application for Rent Review

Subsection 102(3) of the 1979 Act bears on the question whether an Application for Rent Review can be withdrawn:

> 102.-(3) An applicant may withdraw an application at any time before an order is made, but where the application is made under section 126, the application may only be withdrawn with the consent of the Commission.

The manner in which the Commission should deal with a request for withdrawal under subsection 102(3) is touched on in Procedural Guideline No. P-1:

> Withdrawal should normally be permitted, unless the person conducting the hearing is of the opinion that it is in the public interest for the hearing to proceed. If the Commissioner decides, in the exercise of his or her discretion, having due regard to the real merits and justice of the matter and the stage of the proceedings, such consent to withdrawal may not be granted, and the hearing will proceed. (p. 8)

The Guideline seems to apply only to a case where the withdrawal is sought during the hearing. The statute seems to allow an application to be withdrawn after the hearing has been held but before an order has been made. The position taken in this Report is that only in most exceptional cases, if at all, should a landlord be permitted to withdraw an application after the hearing is held but before the order is made. The only reason for seeking to withdraw after the hearing could be to forestall an adverse order. When the matter has proceeded to that stage, the outcome should be determined on the basis of the evidence that was submitted.

If the hearing has not yet ended, or has not even begun, the reason for seeking to withdraw would ordinarily determine whether consent would be given. If the landlord wishes to clear the way for a new Application for a larger increase, or if he simply wants to withdraw without committing himself to any future action, the Commission should set the terms on which it will give its consent. If it does not have inherent power to do so, such authority should be conferred by a statutory amendment. Among other conditions, the landlord could be required to reimburse the tenants for any expenses for advisers or counsel that they may have incurred in preparing for the hearing. The Notices of Rent Increase that accompanied the application could be declared void, with the consequence that any subsequent rent increases the landlord might request would have to be pursuant to new Notices of Rent Increase. A further term should be that any tenant who has given a notice of termination of his tenancy since receiving the Notice of Rent Increase accompanying the Application for Rent Review should be allowed to withdraw it.

If the landlord is prepared to accept the statutory increase instead of continuing with his application for a larger increase, the Commission should allow him to amend his application to that effect and make an order accordingly.

7.2 Pre-Hearing Procedure

The only direction in the 1979 Act regarding the procedure to be followed by the Commission after it has received an Application for Rent Review and before the hearing is in subsection 126(4):

> 126(4) Where an application is made under this section, the landlord shall, not later than fourteen days before the date of the hearing of the application, file with the Commission all the material on which he intends to rely in support of his application, but the Commission may direct the landlord to file additional material and the hearing shall not commence or proceed until the other parties have had an opportunity to examine the additional material.

Some procedural matters are dealt with in Procedural Guideline No. P-5, entitled "Pre-Hearing Disclosure of Evidence by the Parties". The comments in the Guideline concerning the production of documents and calling of witnesses are also helpful. The Guideline touches on the possibility of adjournments to allow additional material to be filed and examined by tenants and on the treatment of material filed after the hearing had been held.

7.2.1 The Cost Revenue Statement

There is no statutory or regulatory authority for the Cost Revenue Statement: it was devised by the Rent Review Program under the 1975 Act and was adopted by the Commission when it assumed responsibility for the administration of rent regulation. It is described in the Guide:

> Landlords are . . . required to present all financial data necessary for the Commission to render decisions on applications [for rent increases]. It is for this purpose that the Cost Revenue Statement has been developed.
>
> The rent review process is based primarily on the cost pass-through principle which involves consideration of year-to-year cost changes. The Cost Revenue Statement is designed to set out the increased operating costs, the capital expenditures and the financing costs that the landlord has experienced, or will experience in the operation of the residential complex. (Guide, p. 2)

There is no mention of the Guide or of the Cost Revenue Statement in the Procedural and Rent Review Guidelines published by the Commission. It would appear from the foregoing quotation that the Commission does not even recommend that landlords use the form, let alone require them to.

A document as important as the Cost Revenue Statement should have more weight than attaches to it from the language of the Guide, which itself is not founded on any statutory or regulatory authority.

***Recommendation 24.* The Guide to the Cost Revenue Statement and the Cost Revenue Statement should be publications authorized by the Residential Tenancy Commission and directed to be used in rent review applications.**

Although there was agreement on the essential part the Cost Revenue Statement plays in the rent review process and generally as to its content, there were differences of opinion amongst counsel for the landlords, the tenants, and the Commission as to when the document should be prepared. It is necessary to set out at some length the various positions on the basic question whether the costs reported for Year 2 should be the actual costs for a completed year or could contain some estimates or projections.

The Commission stated its position in a revision of the Guide endorsed "May 1983" and published in August 1983. The Guide now reads:

> Year 2 in the Cost Revenue Statement means the most recently completed annual accounting period. In exceptional cases some projected data may be accepted . . . .
>
> Where the complex has been recently purchased and a landlord is unable to report actual figures for the full Year 2, the Commission might not allow any operating cost pass-through but base any increase only on a financial loss which may occur in the Projected Year. (p. 3)

The implication is that the Cost Revenue Statement should not be prepared until after Year 2 has ended. The reason advanced for this policy is simply that the base against which cost increases in the Projected Year are to be measured should be as firm as possible in order to minimize errors in the increases passed through into the rents. That will serve to reduce the number and extent of what are called cost corrections,[9] which have to be made in later applications and which cause delay and added work for the Commission. Moreover, if the landlord does not go back to rent review, the cost corrections may never be made.

The tenants' position is that all relevant information about costs and revenues should be made available to them well before the hearing. They wish to have as much time as possible to examine and check the figures submitted by the landlord. They propose that the Cost Revenue Statement be given to them along with the Notices of Rent Increase and Application for Rent Review. They point out that, because the landlord is required to state in his Notice of Rent Increase the intended percentage increase, he must have made some calculation of what his cost increases and projected revenues will be.

The reason given by counsel for the tenants in support of their position is that the tenants whose rent will be among the first to be raised and who must consider seriously whether they can afford to pay the intended rent increase should have a full opportunity to review the landlord's figures supporting his request for an increase. Moreover, they should have the information before the beginning of the sixty days' notice they must give in order to terminate the tenancy before the higher rents come into force. That, however, is not a compelling reason for requiring the landlord to draw up a statement of costs and revenues more than three months before the end of the year to which it applies.

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[9] Further discussion of cost corrections is found in Chapter 11.

The landlords take the position that a suitable time for preparing a Cost Revenue Statement lies somewhere between those proposed by the tenants and by the Commission. They point out that if cost and revenue information is provided when the year has still more than three months to go, it will be unsatisfactory and will have to be supplemented and amended before it can serve as a basis for determining rent increases. The landlords desire the rent determination to be made as close as possible to the date of the first effective rent increase. The delay in holding the hearing that would result if the Cost Revenue Statement was not submitted until the end of Year 2 would involve still further delay while the tenants exercised their rights to examine the material.

On balance, the appropriate time for filing the Cost Revenue Statement together with vouchers, invoices, and receipts would be not less than forty-five days before the effective date of the first rent increase applied for.

This raises a matter that is of great concern to landlords and to tenants, namely, the problem of late and deficient information on costs and revenues. Some landlords, through carelessness, incompetence, inexperience, or lack of training, keep unsatisfactory records. Others keep financial records of a professional quality that are designed for tax and corporate purposes but are not easily reconstituted into the cash method of accounting required for rent review purposes. It is clear, however, that if the cost-pass-through system is to function efficiently and expeditiously, landlords must present their cost and revenue information in a manner that is acceptable to the Commission and must do so within the time limits set down.

Upon receiving the Cost Revenue Statement and substantiating material, the staff of the Commission should examine what has been presented and come to a preliminary opinion as to its quality and completeness. It would be out of place in this Report to attempt to lay down internal procedures for the staff of the Commission. The objective in this stage of the rent review process should be to accumulate as complete and accurate cost and revenue information as is reasonably possible, subject of course to the fact that the Cost Revenue Statement will normally be prepared up to two months before the end of Year 2.

A period of up to one month might be allowed for this stage of the rent review process. In many cases a shorter time would be quite enough to permit the materials submitted by the landlord to be examined and verified by the Commission. In other cases the size of the complex, the volume of material, and the state of the landlord's records are such that it would impose a considerable strain on the Commission staff to achieve any kind of satisfactory result within less time.

During this period, tenants or tenants' representatives would have the opportunity to attend at the Commission office in order to examine the Cost Revenue Statement and substantiating material, offer suggestions, and make requests for additional material and information.

7.2.2 Preliminary Inquiry

There was disagreement among counsel for the landlords, the tenants, and the Commission respectively about the value of a preliminary inquiry. The purpose of such a proceeding would be to ensure that so far as possible all relevant information about the matters that had to be left for disposition by the Commissioner at the hearing would be available at that time.

A preliminary inquiry would be arranged at the discretion of the Commission when circumstances appeared to warrant or when it was requested by any party to the hearing. Such an inquiry should be regarded, not as a hearing, but as a useful procedure to ensure as far as possible that, when the hearing does take place, time will not be taken up with matters that are not in dispute or that adjournments will not become necessary because material is missing or badly assembled. A preliminary inquiry may also serve to let the landlords and the tenants each know what the other's position is on matters of dispute, thereby avoiding surprise and the possibility of adjournments at the hearing. A preliminary inquiry could be conducted quite informally, and the outcome would be no more than a report on the matters discussed. Conclusions and decisions regarding matters entering into the rent determination would be made only by the Commissioner who conducted the hearing itself. The parties attending the hearing would not be prevented from pursuing any matter relevant to the disposition of the rent increase application. It is hoped that a preliminary inquiry, if properly used, would both expedite the conclusion of the rent review hearing by ensuring that all necessary materials were available at the hearing and reduce the need for adjournments by dealing with preliminary matters in advance.

Counsel for the landlord made no objection to the suggestion that there should be provision for preliminary inquiries, but the tenants' counsel expressed opposition for several reasons. In the first place, it was said that it would cause delays. An answer to that objection would be the principle of fixed time limits (see section 7.3 below), if accepted. Counsel also expressed concern about any procedure that involved or contemplated negotiation; however, it is not the purpose of the preliminary inquiry to engage the parties in negotiation.

7.2.3 Commission Staff Reports

The official or officials who have examined the material that has been filed, who were engaged in any preliminary inquiry, or who conducted any inspections should report to the Commissioner who will conduct the hearing to inform him regarding matters about which there appears to be no dispute and other matters relevant to the findings and determination required to be made by the Commissioner. In order that the parties may be informed of the information acquired by the Commissioner in this manner, any such report should be in writing and copies should be available at the hearing if it is not possible to distribute them beforehand. When the officials are conducting such examinations, inquiries, and inspections, they would be acting as the Commission under the authority of section 108 of the 1979 Act and would not be called as witnesses to give evidence to the Commission at the hearing.

This procedure would seem to be in accord with the statutory provisions quoted above. The intent of the Act might have been clearer if the distinction drawn in subsection 103(2) between the Commission and a Commissioner had been made applicable throughout the sections of the Act headed "Procedure of the Commission", which begin with section 102.

7.3 Fixed Time Limitations

Fixed time limits should be imposed notwithstanding the strain they would put on the Commission. Admittedly, the Commission cannot control the number and timing of rent review applications, and the arrangements for staffing and review at all stages of the rent review process can be greatly complicated by the alternation of busy and slack periods. On the other hand, administrative delays are of great concern to all the parties. With fixed time limits, the maximum delay could be reasonably estimated in advance, which would be beneficial to both sides. If enough personnel were available, the time periods could be shortened for simpler applications. The Commission should have the discretion to waive the limits, but it should make a constant effort to do so as infrequently as possible.

***Recommendation 25.* Fixed time limits should be set for the completion of the successive stages in the rent review and appeal process. The Commission should, however, have the discretion to waive the limits.**

7.4 Conduct of the Hearing

7.4.1 Nature of the Hearing

The statute requires that the Commission shall hold a hearing to consider a whole building review application by the landlord. The purpose of the hearing is to determine rent increases justified by the landlord's cost increases, capital expenditures, and any financial loss that he may have suffered. Obviously the tenants have an interest in the outcome of the hearing and should play a part in it; the question is how far their participation should extend and what weight it should have. Unfortunately, there is no Guideline to assist the Commissioners with this question, and the evidence and argument presented during the Inquiry expressed a wide range of opinions. Some Commissioners, at one time, at least, regarded participation by tenants as peripheral and a rent review hearing as essentially a dialogue between the Commission and the landlord. Some tenants, on the other hand, took the position that it was their right to challenge every item of the landlord's costs and revenues and put the landlord to strict proof.

Counsel for the tenants submitted that the Commission should not help the landlord to prepare his case and that a landlord's application should stand or fall on the basis of the material provided by him. If that material was not sufficient to support a claim for increased costs or financial loss, the claim should be rejected and the rent increase requested should be reduced or, in extreme cases, refused.

There are two views of the rent review process. It can be seen as a contest or as a inquiry. The preference of the tenants' representatives for an adversarial kind of review process, similar to the conduct of litigation in the courts, does not seem to result from any great affection for that method of resolving disputes but rather is a reaction to what they consider to be the unsatisfactory consequences of an investigative kind of proceeding. In a court proceeding the plaintiff, who is analogous to the landlord in a rent review hearing, carries the burden of establishing his case. The burden can shift, but initially the plaintiff must make a prima facie case to show why he should succeed. His efforts are resisted by the defendant, and above them stands the judge. The judge has no bias toward one side or the other, but, what is more important for the tenants' submission, he is not expected to help either party to achieve its objective. He bases his decision on the facts as they emerge from the evidence presented to him by the parties and on the law as it applies to the facts. If the plaintiff cannot produce the facts and the law necessary to support his case, he gets no help from the judge. That is the real significance of an adversarial proceeding.

The tenants' representatives do not say that the Commissioners who conduct rent review hearings or the supporting staff of the Commission display a bias towards landlords and against tenants. In fact, the tenants and landlords believe that in general the Commission conducts hearings in a fair and impartial way. What the tenants do object to is anything done to advise a landlord and help him to prepare or improve his presentation to the Commission.

The statute, however, directs the Commissioners both specifically and by necessary implication to conduct their own inquiries into matters that are relevant to the determination of rents. Sections 107, 108, and 109 are explicit:

> 107. At the hearing, the Commission shall question the parties who are in attendance at the hearing and any witnesses, with a view to determining the truth concerning the matters in dispute.

It will be noted that the Commission itself is directed to question the parties:

> 108. The Commission may, before or during a hearing,
> (*a*) conduct any inquiry or inspection it considers necessary; and
> (*b*) question any person, by telephone or otherwise, concerning the dispute.

Again, the Commission is directed to conduct its own inquiry. The same freedom of investigation is permitted in section 109:

> 109. In making its determination, the Commission may consider any relevant information obtained by the Commission in addition to the evidence given at the hearing, provided that it first informs the parties of the additional information and gives them an opportunity to explain or refute it.

The function of a Commissioner conducting a rent review hearing is to serve as an administrative official who exercises quasi-judicial powers in the course of determining the facts on which he will base a rent determination. It was said by the Ontario Court of Appeal in the Reference re Residential Tenancies Act, 105 D.L.R. (3d) 193 at p. 208: "... the Commission by Part XI of the Act is charged with the administration of the provisions of the legislation relating to rent review .... This, however, appears to us to be an essentially administrative function." Although the rent determination itself is largely an arithmetic process, the Commissioner does have extensive discretion with regard to factors entering into the calculation: he can notionalize mortgage obligations, defer the pass-through of a financial loss or a capital expenditure, and gauge the state of maintenance or deterioration of the premises.

So regarded, the Commissioner is not analogous to a judge, other than that he should hold no bias toward either side and should conduct the hearing fairly. The Commissioner is not deciding a dispute between parties but determining the amount of a rent increase to which a landlord is entitled in accordance with the directions laid down in the Act. In order to do so, he must be informed about the landlord's past and projected costs and revenues. That information as provided by the landlord in the first instance may be incomplete, inadequately substantiated, or questionable for one reason or another. In those circumstances the Commissioner should conduct or cause to be conducted his own inquiry in order to satisfy himself that he has an adequate basis for his order. There may be times when he does not have all the facts he considers necessary and he will have to decide whether he can make a finding and, if he can, whether he can allow the landlord's costs in part only.

In the performance of his quasi-judicial function, the Commissioner has the same problems as a judge conducting a trial. What evidence will he hear, what weight should he give to it, what degree of proof should he require for the facts on which he will base his decision, and how far must the applicant go in establishing the validity of his claim?

With regard to evidence, it is clear that the legislature intended the Commissioner to have great freedom to decide what facts and arguments he would accept as relevant to the decision he was called upon to make and how it should be presented or acquired. Counsel for the tenants took strong exception to the admission of evidence from witnesses who were not available for cross-examination. Cross-examination is, of course, only one of several techniques employed in courts of law to ensure that the facts and opinions are thoroughly tested and validated. If a rent review hearing is to serve its purpose, however, it must be expeditious and free from technicalities that not only require the attention of experts but cause delay and expense. This was most certainly the intention of the Minister who sponsored the 1979 Act in the legislature.

It was not shown to the Inquiry that the procedures the Commission follows regarding the admission of evidence have prejudiced the interests of landlords or tenants to any significant extent. Because of the purpose of a rent review hearing, the evidence is in great part concerned with establishing the landlord's costs. Problems can arise because of the absence of specific directions as to how this should be done. The Guide addresses the matter in very general terms:

> Landlords should present their residential operating costs in as much detail as possible. A detailed presentation will assist the Commission.
>
> The landlord must reasonably substantiate Year 2 costs by producing invoices, receipts, financial statements, etc. Invoices must be

> separated and totalled for each operating cost category for the 12-month period corresponding to Year 2. (Guide, p. 4)

Under the heading "Financing Payments", it is said:

> Full details of financing, acquisition date and acquisition cost are required . . . .
>
> Full supporting documentation of these costs should be submitted . . . .(Guide, p. 6)

The problem that instructions of this nature cause for landlords is that phrases like "in as much detail as possible" and "reasonably substantiate" can be applied in many ways depending upon the Commissioner before whom the hearing is held and on the attitude of the tenants. While it is not feasible to lay down specific directions with regard to all the matters that may come up for consideration, expenditures of more than fifty dollars should be supported by invoices or receipts.

The procedures outlined in this Report, if adopted, should go far towards relieving the Commission and the parties of much of the difficulty that they now appear to encounter. If the Cost Revenue Statement and the supporting material have to be filed and made available for inspection forty-five days before the scheduled date of the hearing, the Commission staff would be able to examine the material and tell the landlord whether they thought he had satisfied the requirements of the Guide. Anything that might be said in that regard would be informal and not binding on the Commission in any way; in the final analysis the burden is on the landlord to satisfy the Commissioner at the hearing. At least the landlord would have some idea of where he stood and what more if anything was necessary.

The forty-five days would also give the tenants enough time to investigate the material themselves and inform the Commission and through it the landlord if they found the material inadequate. Tenants have a positive responsibility to take advantage of the opportunity to examine the landlord's material before the hearing and draw attention to any deficiencies. If they fail to do so in reasonable time, it should be open to the Commissioner to make a determination on the basis of the material the landlord has filed. Finally, a preliminary inquiry could be resorted to if it was apparent that the material presented up to that time was unsatisfactory.

If there are *bona fide* differences of opinion about the facts pertaining to the landlord's application, the Commissioner should make the determination on the basis of the balance of probabilities or, to put it another way, on whether the landlord had supported his position by a preponderance of the evidence made available to the Commission.

7.4.2 Transactions by Numbered Companies

The tenants' advocates were worried that landlords might submit cost figures that resulted from transactions which were deliberately designed to give rise to large cost pass-throughs. The costs that were singled out as being particularly liable to significant distortion were the costs of financing the purchase of a residential complex. Not only might a purported sale be a sham in that ownership did not actually change hands, but transactions might take place between parties who had hidden agreements between themselves that would result in excessive purchase prices. The use of numbered companies was regarded as an indication that there might be an irregularity that should be investigated.

The suspicion in the mind of the public that there is something not quite right about a limited company that is identified by a series of digits rather than a name is not a new phenomenon. That suspicion was heightened by newspaper stories about the sale and resale of residential complexes late in 1982, allegedly to some fifty numbered companies. Since there have been no completed applications with respect to these transactions, the pertinent facts are not known. However, whatever part numbered companies may have played in the affair, it would have been no different had the companies been identified by names rather than numbers. Moreover, the use of numbers in the name of a company is a convenience in the conduct of corporate business. No distinction should be drawn between named and numbered companies in connection with the purchase or sale of residential tenancies.

7.4.3 Non-Arm's Length Transactions

The importance given to the question whether or not a transaction was between parties who are at arm's length is misconceived. In the first place, there is no recognized definition of what it is to be at arm's length. The concept is a feature of income tax law, where it is the subject of complex statutory provisions that have resulted in much litigation. Despite all that, the federal *Income Tax Act* falls back on the simple statement that being at arm's length is a question of fact. This has been litigated in an effort to formulate judicial principles, but certainty has not been achieved. Even if it were desirable that income tax rules and principles should become a feature of rent regulation, only a legal type of proceeding with its attendant delays and expense could bring out the true facts if a serious issue arose. The rent review process is quite unsuited to that purpose.

Even if it could be determined that parties to a transaction were or were not at arm's length in accordance with some generally accepted meaning of the term, it would still not be conclusive on the two matters of vital importance to the tenants. What the tenants want to know in a rent review application is whether the transaction is *bona fide* and, if it is, whether its terms are fair and reasonable. Whether or not the parties to the transaction were at arm's length may have a bearing on the resolution of those questions, but the point is not of prime importance, nor would it be conclusive.

7.4.4 Fictitious or Contrived Transactions

A transaction can be false in the sense that there is no legal transaction at all, or it may be designed or contrived to give rise to a fictitious or excessive cost increase or financial loss. Tenants should be protected against dishonest or overreaching landlords who might engage in those activities. A first step would be to require landlords to comply with the procedure outlined below before a claim for a capital cost or a financial loss would be considered.

Recommendation 26. **Every claim for a financial loss resulting from financing costs incurred in the purchase of the residential complex should be accompanied by a sworn declaration by the landlord that the transaction (or transactions) by which the complex was acquired were *bona fide* and that the price actually paid and the terms of payment were as shown by the documents presented to the Commission in support of the claim.**

Recommendation 27. **A transaction giving rise to a capital cost should be evidenced by an agreement in writing verified by a sworn declaration of the landlord that the cost was as stated in the agreement and was in his opinion reasonable.**

When the landlord is a corporation, the declaration should be made by a senior officer. Declarations by landlords' agents or junior officers of corporations should not be accepted. The requirements for declarations should be rigorously applied without exception, and the declarations should be filed with the Cost Revenue Statement.

A declaration would give *prima facie* authenticity to the facts of the transactions but would not prevent the Commissioner or any tenant from questioning the genuineness of the transaction. If it appears to the Commissioner that the transaction might be false or contrived, he should hear the evidence and rule as to whether the transaction should be accepted as valid. A declaration would not limit his discretion in determining whether the claim for a capital cost or a financial loss justified a rent increase.

7.5 Determination of Costs

The question whether the amount of a cost entering into a landlord's intended rent increase is fair and reasonable presents problems of another order that were given some attention during the hearings. Generally speaking, the tenants made two points, although they did not develop them into firm submissions. One was that landlords' expenditures are sometimes unnecessary or excessive. The other was that expenditures that might quite well have been made in Year 2 were deferred until the Projected Year, thereby giving rise to rent increases that could not otherwise have been justified.

With regard to unnecessary expenditures, the problem, as tenants see it, is that a landlord might undertake a capital project that was not necessary for the tenants' use or enjoyment, even though it might improve the quality of the complex. Expensive furniture for the lobby was given as an example. The tenants complained that an allowance for such costs would be added to the rents and the increased rents would continue after the expenditure had been fully recouped. If the recommendations in this Report regarding base year review or rent correction hearings are acted upon, the long-term advantage of incurring a capital expenditure for the purpose of a permanent rent increase will be largely removed. In any event, this Inquiry is not prepared to recommend that the manner in which a landlord maintains and improves the complex should be subjected to the supervision of the Commission at the instigation of the tenants. The only matter with which the Commission should be concerned is whether the money actually has been or will be spent in connection with the premises and whether the expenditure was reasonable in relation to the property that was acquired or the project that was undertaken.

The review process outlined in this chapter is designed to give tenants reasonable time and opportunity to investigate the landlord's costs and decide whether it would be helpful to engage the assistance of the Commission staff. The most effective control on the costs entering into the rent increases is an alert and aggressive body of tenants that takes advantage of the assistance offered by the Commission's investigative powers.

With regard to projected expenditures that may be thought to distort cost increases from Year 2 to the Projected Year, the submission of Year 1 costs might show whether the Projected Year expenditure was in keeping with earlier outlays of the same nature.

Recommendation 28. **It should be obligatory to include Year 1 costs in the Cost Revenue Statement, at least when there has been no change in ownership.**

7.6 Orders and Reasons

Unless there is an appeal, a rent review hearing is completed by an order pursuant to subsection 131(5). The subsection provides that the Commission shall make the order, but under subsection 103(2) the Commissioner who conducts the hearing may exercise any of the powers of the Commission and an order of the Commissioner shall be deemed an order of the Commission. An order made under subsection 131(5) is issued on a form provided by the Commission and is signed by the Commissioner who conducted the hearing. The order is accompanied by one, and sometimes two, appendices. Appendix A sets out the maximum rents that may be charged for each rental unit and the date the rents may take effect. Appendix B, if there is one, contains the Commissioner's findings regarding cost increases, financial loss, and changes in the standard of maintenance and repairs and his determination of the total rent increase permitted together with his reasons for his findings and determination. The Act does not require that the order be accompanied by reasons when it is issued. However, if the order is appealed, subsection 117(4) requires that " . . . the Commissioner who made the order or decision being appealed shall, where he has not already done so, prepare reasons for the decision or order and give a copy of the reasons to each party to the appeal." And Section 17 of the *Statutory Powers Procedure Act* R.S.O. 1980, c. 484, which applies to Commission hearings, requires that "a tribunal shall give its final decision and order, if any, in any proceedings in writing and shall give reasons in writing therefor if requested by a party."

The Inquiry has been told that in the early years of rent regulation under the 1979 Act, all orders when issued were accompanied by reasons. It is understood that the current practice is that written reasons accompany the order only when (i) it appears to the Commissioner that there are features of the application that call for special attention, (ii) the application involves a complex of fifty units or more, (iii) the order is appealed, or (iv) a party specifically requests them.

The Inquiry is impressed by the careful attention given to the preparation of reasons by the Commissioners. Reasons can throw valuable light on difficult questions, sometimes of a legal nature, that arise in the course of the rent-setting process and that are not dealt with in the Guidelines. Nevertheless, the usefulness of lengthy written reasons must be balanced against the time taken to prepare them, which not only delays the issuing of the order but occupies the attention of the Commissioner to the exclusion of proceeding with other applications. Evidence given to the Inquiry revealed that the average time from the hearing to an application to an order is about thirty days. Both landlords and tenants are prejudiced by delays following a hearing.

For that reason, anything that reduces that time should be given careful consideration. The Act should prescribe a fixed period within which an order under subsection 131(5) should be issued. A period of fifteen business days is suggested. In particular cases, that could be extended by the Board of Commissioners at the request of the Commissioner who conducted the hearing. The request should be made before the fixed period expires. The landlord and the tenant should be notified of the extension and told briefly why it was necessary.

Extended written reasons should be provided only when required by law or when the Commission thinks it desirable. The issuance of the order should not be delayed until the reasons have been written. The order as issued, however, should always include a summary of the Commissioner's findings; two forms drawn up by the Commission for Commissioners to use in preparing their orders could be used for that purpose. The forms are #13014, headed "Operating Costs Worksheet", and form #13015, headed "Justification Worksheet". They bring together the financial data accumulated in the course of the hearing that are the basis for the Commissioner's findings regarding the cost increases and financial loss that enter into the calculation of the total rent increase the landlord is permitted to charge. Appropriately amended for the purpose, the forms should accompany the order. For the information of the tenants, the Operating Costs Worksheet should show the costs proposed by the landlord as well as the costs accepted by the Commissioner.

The copy of the order given to the tenants will not include Appendix A, which sets out the rents ordered for all the units. The order will, however, state the rent increase permitted for the unit occupied by the tenant, the base rent for the unit as found by the Commissioner, and the effective date of increase The copy of the order given to the landlord will include Appendix A as heretofore.

The order should include information about the right to appeal and the steps to be taken.

Recommendation 29. **The following rules should be adopted for whole building rent review:**

(a) All tenants should be given both Notices of Rent Increase and copies of the Application for Rent Review at the same time and at least ninety days before the first effective date of the rent increase applied for.

(b) The landlord should file with the Commission copies of the Notices of Rent Increase and the Application for Rent Review within fourteen days of the required date of the Notice and Application.

(c) As soon as the Commission has accepted the landlord's application, it should send notices of acceptance to the tenants and the landlord with information regarding the procedures that will follow.

(d) The Commission should have authority to impose terms when permitting an Application for Rent Review to be withdrawn under subsection 102(3).

(e) The Cost Revenue Statement should be prepared and filed not later than forty-five days before the date of the first effective rent increase applied for. At the same time the landlord should file with the Commission the vouchers, invoices, and receipts that substantiate his expenses incurred up to that time. It should be a requirement that expenditures of more than $50 must be supported by invoices, receipts or vouchers.

(f) If the Cost Revenue Statement, duly completed and accompanied by vouchers, invoices, and receipts, is not filed at least forty-five days before the effective date of the first rent increase applied for, the Commissioner, when setting the dates the rents may take effect under clause 131(5)(a) of the *Residential Tenancies Act*, should not set any effective date sooner than forty-five days after the date on which the Cost Revenue Statement and supporting documents were filed.

(g) A preliminary inquiry should be arranged at the discretion of the Commission when circumstances appear to warrant or when it is requested by any party to the hearing.

(h) The order of the Commissioner accompanied by his findings regarding cost increases should be issued within fifteen days of the hearing.

7.7 Duplication of Provisions for Notices of Rent Increase

When it was decided in 1979 not to bring into force Parts I to IV, VI, and VII of *The Residential Tenancies Act, 1979,* which were to replace Part IV of *The Landlord and Tenant Act* dealing with residential tenancies, the result was that the requirement that a landlord give a tenant ninety days' notice of a rent increase appeared in both Acts. The two provisions are substantially identical:

	Residential Tenancies Act Secs. 60 and 61		*Landlord and Tenant Act Sec. 129*
60(1)	A landlord shall not increase the rent for a rental unit	129(1)	A landlord shall not increase the rent for a residential premises
	unless he gives the tenant		unless he serves on the tenant

	Residential Tenancies Act Secs. 60 and 61		*Landlord and Tenant Act Sec. 129*
	a notice in the prescribed form setting out his intention to increase the rent and the amount of the increase		a notice in writing setting out his intention to increase the rent and the amount of the increase
	expressed both in dollars and as a percentage of the current rent		
	intended to be made not less than ninety days before the end of, (*a*) a period of the tenancy; or (*b*) the term of a tenancy for a fixed period		intended to be made not less than ninety days prior to the end of, (*a*) a period of the tenancy; or (*b*) the term of a tenancy for a fixed period
60(2)	An increase in rent by the landlord where the landlord has not given the notice required by subsection (1) is void.	129(4)	Subject to the provisions of the *Residential Tenancies Act*, an increase in rent by the landlord where the landlord has not served a notice according to the provisions of subsection (1) is void.
60(3)	Subsections (1) and (2) do not apply to a rent increase for a rental unit where the rent increase is intended to take effect when a new tenant first occupies the rental unit under a new tenancy agreement.		
61(1)	Where a tenant who has been given a notice of an intended rent increase under section 60 fails to give the landlord proper notice of termination, he	129(2)	Where a tenant who receives a notice under subsection (1) fails to give to the landlord notice of termination in accordance with section 99 within the

Residential Tenancies Act Secs. 60 and 61	*Landlord and Tenant Act Sec. 129*
shall be deemed to have accepted,	time required under section 100, 101, 102, 103 or 104, as the case requires, he shall be deemed to have accepted,
(*a*) where the amount of the rent increase is not subject to rent review under Part XI,	(*a*) where the amount of the rent increase is not subject to review by law,
(i) the amount of the rent increase specified in the notice of the landlord, or	(i) the amount of the rent increase specified in the notice of the landlord, or
(ii) such other rent increase as may be agreed upon in writing between the landlord and the tenant; or	(ii) such other rent increase as may be agreed upon in writing between the landlord and the tenant; or
(*b*) where the amount of the rent increase is subject to rent review under Part XI, the amount of rent increase that does not exceed the amount allowed under that Part.	(*b*) where the amount of rent increase is subject to review by law, such amount of rent increase as does not exceed the amount allowed under the law.
61(2) The deemed acceptance by a tenant of an increase in rent in the case mentioned in clause (*b*) of subsection (1) does not constitute a waiver of the tenant's right to take whatever proceedings are available to him under this Act for the review of rent increases.	129(3) The deemed acceptance by a tenant of an increase in rent in the case mentioned in clause (2)(*b*), does not constitute a waiver of the tenant's right to take whatever proceedings are available to him under any law in force that provides for the review of rent increases.

Provisions equivalent to sections 99 to 104 of *The Landlord and Tenant Act* were incorporated in sections 45 to 48 in Part IV of *The Residential Tenancies Act, 1979*, but Part IV was not declared in force.

Had *The Residential Tenancies Act, 1979*, as passed by the legislature, been declared in force in its entirety, Part IV of *The Landlord and Tenant Act*, which included the provision for serving notice of rent increase, would have been repealed. This provision had been section 115 of *The Landlord and Tenant Act* R.S.O. 1970, c. 236, as amended by *The Act to Amend The Landlord and Tenant Act* c. 13, S.O. 1975 (2nd session). It became section 129 of the *Landlord and Tenant Act* R.S.O. 1980, c. 232. *The Act to Amend The Landlord and Tenant Act* c. 13, S.O. 1975 (2nd session) was passed at the same time as *The Residential Premises Rent Review Act* c. 12, S.O. 1975 (2nd session). Subsection 135(4) of *The Residential Tenancies Act, 1979* provided that Part IV of *The Landlord and Tenant Act*, which included section 115 as it then was, would be repealed, but that subsection was not declared in force.

It is evident that in 1975 the legislature regarded the requirement for a Notice of Rent Increase as a desirable addition to the general law of landlord and tenant. When it passed *The Residential Tenancies Act, 1979*, it intended sections 60 and 61 of that Act to replace section 115, as it then was, of *The Landlord and Tenant Act*. Subsection 60(1) of *The Residential Tenancies Act, 1979* provided that information regarding the percentage increase in the rent to be given in the Notice under that section. This addition made the Notice suitable for the purposes of a system of rent regulation that combined rent control and rent review but did not affect its function as a general requirement of landlord and tenant law. Sections 60 and 61 of the 1979 Act were not included among the rent review provisions in Part XI of that Act but were made a separate Part V.

Although it would seem to be pointless and a source of possible confusion to keep two almost identical statutory provisions in force, the legislation as it stands seems to make this necessary.[10] The rent regulation process is contained in the *Residential Tenancies Act*,[11] and the first step is to give a Notice of Rent Increase under section 60 of that Act. The Notice must be in a prescribed form, and the form is prescribed by a regulation under that Act. Since it could be argued that a notice under section 129 of the *Landlord and Tenant Act* would not be effective, section 60 of the *Residential Tenancies Act* and the prescribed form must be kept extant.

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[10] The Commission has taken no position on the matter. In Landlord and Tenant Guideline No. LT-1, issued in March of 1980, the Commission deals with Notices of Rent Increase without mentioning section 129 of the *Landlord and Tenant Act*.

[11] *The Residential Tenancies Act, 1979* S.O. 1979, c. 78, in which the word "The" was part of the title, became chapter 452 of the Revised Statutes of Ontario 1980 under the name the *Residential Tenancies Act*. Throughout the revised statues of 1980, the word "The" was omitted from the titles of all Ontario statutes. The revised statute was proclaimed in force on August 1, 1981. There were no changes in the number of sections. When the law currently in force is being discussed, the reference is to the revised statutes, namely the *Residential Tenancies Act* and the *Landlord and Tenant Act*.

The general law of landlord and tenant, however, is found in the *Landlord and Tenant Act*, and it is an integral part of that law that a notice of rent increase should be given to tenants. However, because most residential tenancies in Ontario are subject to rent regulation, most landlords have probably come to consider the form prescribed under the *Residential Tenancies Act* to be the right form to use whenever they give notices of rent increase. There are however, differences between the two Acts that are relevant to the notices of rent increase. One concerns the length of notice that must be given by a tenant who decides to move rather than to pay an increased rent. The other concerns the manner in which the notice may be served or given.

Recommendation 30. **A Notice of Rent Increase sufficiently given under the *Residential Tenancies Act* should be deemed to be a notice sufficiently served for purposes of the *Landlord and Tenant Act* under subsection 129(1) of that Act.**

Chapter 8

Whole Building Rent Review Appeals

The appeal process in the rent review system is unsatisfactory from both the administrative and procedural points of view. The principal flaw on the administrative side is the length of time that elapses between a rent review order and the order of the appeal panel disposing of the appeal. Procedurally, the appeal process raises two questions: (i) who is a party to an appeal and is hence entitled to the benefit of any rent reduction that may result from a tenant's appeal or will be subject to any rent increase resulting from a landlord's appeal? and (ii) what evidence should be received by the appeal panel?

The procedure governing an appeal to an appeal panel of the Commission from a whole building rent review order resulting from an application under section 126 is found in section 117 of the 1979 Act. A further appeal may be taken on a question of law from the decision or order of the appeal panel to the Divisional Court.

8.1 Delays

The long delays in the completion of appeals under section 117 can be remedied in two ways. The first and most obvious is to increase the number of Commissioners and staff. However, expediting the appeal process is not simply a matter of increasing the number of appeal Commissioners and staff, even if the government were prepared to make the necessary funds available.

It should be emphasized not only that delays in the review process are inimical to public acceptance of rent regulation but that they are the cause of monetary loss and financial confusion to both landlords and tenants.

Recommendation 31. **Funding should be made available without delay to**

enlarge the Commission as a necessary step in reducing delays in the appeal process.

8.2 Single-Commissioner Appeals

During the Inquiry, the suggestion was made that some appeals might be heard by a single Commissioner, although subsection 117(7) of the 1979 Act requires that appeals be heard by a panel of three Commissioners. Evidence was given that as many as one-third of the appeals may deal only with relatively simple issues or nominal amounts of money (Transcript, July 26, 1983, p. 126). In such cases, review by an experienced Appeal Commissioner should be sufficient. The merit of single-commissioner appeal hearings should also be considered in light of the expensive and time-consuming logistic problems of arranging an appeal hearing by a panel of three Commissioners. Section 87 of the 1979 Act is the relevant provision:

> 87. An application to the Commission may only be made, and all proceedings before the Commission shall be held, in the region in which the residential complex in question is situate, unless the parties otherwise agree in writing or the Commission otherwise directs.

Rather startling evidence was given regarding the delays and expenditure of Commissioners' time that arose in the course of assembling and maintaining the required panel of three appeal Commissioners in outlying parts of the province, sometimes only to hear a single appeal.

***Recommendation 32.* The Board of Commissioners should be authorized in its discretion to direct that certain appeals should be heard by a single Commissioner.**

The landlord and tenants who are parties to those appeals should be notified of any such direction and informed that at the simple request of the landlord or of at least 20 per cent of the tenants,[1] the appeal will be heard by a panel of three Commissioners. When so advising the parties, the Commission may wish to state the criteria for appeals that are heard by a single Commissioner.

8.3 Parties to the Appeal

Appeals from whole building rent review orders raise difficult problems that are of substantial importance to landlords and tenants alike. The procedural question of who should be parties to an appeal is dealt with in subsections 117(1), (2) and (3) of the 1979 Act, which read as follows:

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[1] The calculation of this figure is discussed in section 8.5.

> 117.-(1) Any party to an application who took part in the hearing may, within fifteen days of receiving the decision or order of a Commissioner, appeal the decision or order by filing a notice of appeal in the prescribed form with the Commission and promptly giving a copy of the notice,
>
> (*a*) where a tenant is appealing a decision or order resulting from an application under section 126 (whole building rent review), to the landlord;
>
> (*b*) where a landlord is appealing a decision or order resulting from an application under section 126, to the tenant of each rental unit in respect of which the appeal is brought; and
>
> (*c*) in all other cases, to all other parties to the application who took part in the hearing.
>
> (2) Despite the fact that a person did not appear at the hearing, he may apply to a member of the Board of Commissioners for permission to appeal and the member of the Board may, in his discretion, permit the person to appeal upon such terms and conditions as the member of the Board considers just.
>
> (3) The parties to the appeal are the person appealing, any person entitled to receive a copy of the notice of appeal and any person added as a party by the Commission.

The substantial question is whether all the tenants should be affected by the outcome of a whole building rent review appeal or only those who are parties and who, by implication, contributed time and money to the prosecution of the appeal.

At one time it was the policy of the Commission that only the tenants who were parties to an appeal could take any benefit, or suffer any prejudice, from the outcome of the appeal. The position taken in this Report is that, even though a tenants' appeal or defence to a landlord's appeal is instigated or supported by only some of the tenants, the results should be for the benefit of, or to the prejudice of, all. So far as the proceedings in a landlord's appeal are concerned, the question whether a tenant is or is not a party is only important, if at all, for some procedural reason such as to determine who is allowed to speak. The outcome of the appeal would affect all the tenants since it will influence the total permitted rent increase.

The matter of who should be parties is dealt with at some length in Procedural Guideline No. P-2:

> The Commission has power to add persons as parties to an appeal (section 101(a)). The power to add persons as parties is particularly important with respect to appeals from whole building rent review orders. Situations will frequently arise where several tenants appeal a rent review order. A strict application of the above rules would mean that the only parties to the appeal would be the landlord and the tenants who appealed. However, in whole building rent review cases it would be difficult to deal only with units occupied by tenants who appealed. Adjustment of their rents might necessitate adjustment of the rents of tenants who did not appeal. Therefore, since the interests of these other tenants may be affected, all tenants might be made parties to the appeal. A similar procedure should be followed where a landlord appeals a rent review order with respect to a few units only, but where it is clear that other tenants could be affected. (p. 3)

During the hearing, evidence regarding the practice followed by the Commission was given by the Registrar of Appeals:

> So, generally, our procedure now is never [to] add all tenants as parties to an appeal prior to a hearing. The procedure is that the notice of appeal itself which are all required to be filed in the local office of the Commission will be forwarded in to the Registrar of Appeals' Office, which is my office and I will review all of them and make a preliminary determination as to whether I think the panel might wish to add the parties at the hearing.
>
> I will not, myself add the parties. If I think that the issues raised in the appeal are going to affect the interests of other tenants, then I will suggest that other tenants be added as parties and I will direct the local office to inform the persons who might be added that the possibility exists and to send them a form letter explaining the procedure to them. And on the notice of hearing, there will be listed as the purpose of the hearing, considering submissions by all parties present and potential as to whether tenants should be added as parties.
>
> Then, at the appeal hearing itself the panel will look at that question as a preliminary matter and make an actual endorsement, adding parties as they decide to do it then. (Transcript, July 26, p. 118)

Both the Guideline and the Registrar of Appeals speak of the possibility that the interests of other tenants, that is to say, tenants who did not appeal, may be affected by a whole building review appeal, and they suggest that this might be a reason for adding all tenants as parties to the appeal. Nothing is said of the position of the other tenants if they were not added as parties. If the earlier practice of the Commission in cases where tenants were not added serves as a guide, the implication would be that those tenants would not benefit from any reduction of the landlord's permitted total rent increase (there is no indication whether those tenants' rents would be raised if the landlord conducted a successful appeal and the permitted total rents were increased).

The Commission may have taken an equivocal position on the matter because it wished to devise a procedure that would give effect to the provisions of section 117. That section, however, seems to assume that the issues in the appeals that would come before the appeal panel of the Commission would lie between a landlord and one, or perhaps several, tenants, but not necessarily all the tenants. However, a whole building rent review would involve all the tenants at all stages of the process.

At the first level of a whole building review, two things are done. First, the Commission determines a total rent increase for the complex (see subsection 131(1)); second, it apportions the total increase among the units in the complex (see subsection 135(5)). When apportionment was in the discretion of the Commission, there could conceivably have been a situation where no rent increase would be allocated to a particular unit. Under percentage apportionment, as required by section 5 of the 1982 Interim Act, that is no longer possible: some rent increase will be apportioned to every unit. All the appeal panel can do is raise or lower the permitted increase; the rents of the units will go up or down accordingly.

A tenant who appeals a rent review order will do so for one reason only—he thinks his rent increase is excessive. To succeed he must attack the total rent increase permitted under section 131. When the landlord is the appellant, his only ground of appeal is that the total permitted rent increase was not enough. If discretionary apportionment were restored, both landlord and tenants might wish to object to particular rent increases ordered by the Commission. Even so, an appeal order increasing or decreasing the rent for a particular unit ought to have an effect on the rents of the other units. If a landlord is permitted a specific amount of increased rent, he should be able to charge to one unit what he cannot charge to another. Ordinarily then, the rent not paid by the tenants in one unit will have to be paid by the tenants in another.[2]

A requirement that the parties to a whole building review appeal should be the landlord and all the tenants could cause difficulties among the tenants, because some of them might not be willing to spend the time and share the costs necessary for prosecuting or contesting an appeal. And there can be quite legitimate reasons for that attitude, of which not the least is a genuine belief that the appeal or defence will not be successful. Nevertheless, it must be asked whether tenants who do not support an appeal or a defence to a landlord's appeal should enjoy the benefits if the tenants win. Conversely, it may be asked whether they should be under some moral obligation, at least to help defray the costs of an unsuccessful appeal.

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[2] Certain rare exceptions may occur, such as if a service has been discontinued for one or a few tenants.

It is difficult to answer those questions, and, whatever the answers, the result may be dissension among the tenants. There is something to be said for the principle that tenants who do not wish to participate in a rent review procedure should not find themselves involved as parties. Nevertheless, since the principle of whole building rent review has been accepted by the legislature, it should be applied consistently and the integrity of the process should not be prejudiced. At the same time, tenants should be protected, to some extent at least, from being involved by a small minority among them in disputes they do not favour.

***Recommendation 33.* The Commission should not be required to proceed with an appeal by a tenant or tenants from a whole building rent review order unless the appeal is authorized by a tenant from each of at least 20 per cent of the rental units occupied by rent-paying tenants, except in the special case where only one or a few tenants would be affected by the outcome.**

***Recommendation 34.* The parties to every whole building rent review appeal should be the landlord and all the tenants.**

***Recommendation 35.* The total rent increase for all the residential units in a complex, as it is finally determined on appeal, shall be apportioned amongst all the rental units in accordance with the applicable rules.**

8.4 Evidence on the Appeal

A second and very important procedural problem that is inherent in the appeal process and about which there is much difference of opinion concerns the evidence that can be adduced at the appeal hearing. The statutory provisions are found in subsections (5), (6) and (8) of section 117 of the 1979 Act:

> 117.-(5) The findings of fact set out in the reasons for the decision or order being appealed may be taken to be true unless, within seven days of the filing of the notice of appeal or receipt of a copy thereof, or within seven days of receiving the reasons, whichever is later,

a party to the appeal files a statement in the prescribed form with the Commission and gives a copy of the statement to all other parties to the proceeding setting out,

(*a*) the findings of fact set out in the reasons with which he disagrees; and

(*b*) any facts he intends to prove at the hearing of the appeal that were not set out in the reasons.

(6) At the hearing of the appeal, the introduction of evidence shall, unless the appeal panel otherwise directs, be limited to proving facts,

(*a*) with which a party to the appeal has disagreed in a statement filed under subsection (5); or

(*b*) which a party to the appeal has stated, in a statement filed under subsection (5), he intends to prove.

(8) After the hearing of the appeal, the appeal panel may,

(*a*) affirm the decision or order of the Commissioner; or

(*b*) make any decision or order that a Commissioner is authorized to make under this Act, and for such purposes the appeal panel may substitute its opinion for that of the Commissioner.

The appeal procedure contemplated in subsections (5) and (6) is materially different from that of the 1975 Act. Subsection 13(4) of the 1975 Act directed that an appeal to the Residential Premises Rent Review Board should proceed by way of a hearing *de novo*, which simply means afresh, a second time. It could be that the burden of time and effort that was imposed on the parties and on the Rent Review Board by a full re-hearing was one of the main reasons why the drafters of the 1979 Act sought to devise a procedure that would lighten those demands. The evidence presented to the Inquiry shows that whatever success may have been achieved has been offset by the confusion into which the appeal procedure under the 1979 Act has fallen. The Inquiry was informed that there is no consistency of approach among appeal panels on the question of what evidence will be accepted on an appeal.

In Procedural Guideline No. P-2, the Commission has published extensive instructions regarding the introduction of evidence in appeal hearings. The gist of the instructions is that "It is essential for all parties to an appeal to understand that they will not be entitled to introduce factual evidence at the appeal hearing unless a Statement of Disputed and Additional Facts has been filed" (p. 8). The strength of that injunction is undermined by the further remark, made necessary by the statute, that "the factual evidence may be limited as set out unless the appeal panel otherwise directs." That puts the whole matter back in the hands of the appeal panel.

The findings of fact that an appellant disputes may concern matters that were in existence at the time of the hearing or matters that occurred after the hearing. An example of the former would be the circumstances attending the purchase of the complex. An example of the latter would be the actual costs that were incurred in the Projected Year, for example for fuel or repairs, and which might differ substantially from the estimated costs used to calculate the rent increase. The introduction of new evidence creates different problems from the introduction of evidence that was available at the time of the hearing, and as time passes, new evidence will become available.

With regard to new evidence, it can readily be understood that a long delay preceding the hearing of an appeal permits the Projected Year costs, and on occasion even Year 2 costs, to be confirmed or corrected to a greater extent than if the appeal were disposed of sooner. There would probably be less new evidence if the appeal were heard within, say, two months of the date of the first-level decision. At one time the delay was as long as five months. If that delay could be reduced substantially, it would go a certain distance toward solving the problem.

With regard to evidence of matters that occurred before the hearing, the first question is what evidence was in fact presented to the Commissioner. A proposal that received considerable support was that a transcript of the proceedings before the Commissioner should be prepared for the purposes of appeal. At present, there is no formal record of the hearing before a Commissioner. The Commissioner is expected to keep his own notes of the evidence and material presented for his consideration, but those are personal and private and are not published. Usually, but not invariably, a member of the Commission staff is present and acts as a registrar and secretary. The Commissioner is provided with a tape recorder, which he or the secretary operates if he so wishes. The taped record may or may not be transcribed, but even if it is, it is not made available to the parties to the appeal.

It is difficult to believe that anything less than a transcript prepared and certified by a professional reporter would be a satisfactory official record of the hearing. And yet, to require that a transcript be available for any appeal would mean that a reporter would have to be present and take down the evidence at every hearing. The annual report of the Residential Tenancy Commission reveals that in the year 1982-83 there were 4,202 whole building review orders and only 671 whole building review appeals. The usefulness of requiring a reporter to be present at every hearing in order that a transcript might be available in the event of an appeal would have to be overwhelming to justify the cost. It must also be kept in mind that the preparation of a transcript would be a further cause of delay in the hearing of the appeal.

A transcript, if available, could be used in the appeal process in either of two ways. It could serve as the evidentiary basis of the appeal, as it does in courts of law, where the admission of additional evidence is strictly controlled. Or it could be used to reveal what evidence, if any, had been given to the Commissioner to support the findings of fact that were made by him and which the appellant disputed and what further evidence was required in order that the appeal panel might arrive at a decision on the real merits of the case. In either instance the transcript would be of no assistance in dealing with the problem of new evidence.

The consequence of there being no transcript is that, when there is a dispute as to how the Commissioner arrived at a finding regarding a particular cost or expenditure, the only source of information is his reasons, which are required under the 1979 Act. The weakness in this procedure is that the reasons may have been prepared some time after the hearing and from notes that were not a complete record of the evidence presented at the hearing.

The 1979 Act attempts to steer a course somewhere between a trial *de novo* and the legal appeal procedure. It appears from the evidence given to the Inquiry that the Commission has not been successful in developing a workable technique that complies with the statutory provisions found in section 117 and suits the special features of an appeal from a whole building rent review order. In such an appeal, the parties are one landlord and anywhere from one to several hundred tenants and the appeal concerns the validity of one, or probably several, specific items of cost.

***Recommendation 36.* The following rules should be adopted for whole building review appeals.**

(a) A landlord or the tenants who wish to dispute a rent review order should file a Notice or Notices of Appeal with the Commission within twenty days of the date of the order. Form 5 "Notice of Appeal" should be amended.

(b) A late filing should be accepted only in exceptional circumstances.

(c) The Notice should:

- **(i) specify one or more findings or determinations made by the Commissioner in the rent review order and disputed by the party or parties taking the appeal; and**
- **(ii) state briefly the reason for the disagreement.**

(d) If it appears that the reason for the appeal is simply to correct an error or errors in arithmetic, a single Appeal Commissioner should be authorized to make such corrections as are called for without holding a hearing.

(e) A Notice of Appeal should be acknowledged by a notice from the Commission informing the appellant or appellants:

(i) that the appeal hearing will be limited to a review of those findings or determinations by the Commissioner specified in the Notice of Appeal;

(ii) what the Commission's policy is on the introduction of evidence at the hearing;

(iii) when and where the appeal will be heard.

(f) The notice from the Commission should be given to the landlord and all tenants. The date set for the hearing should be not later than thirty days after the date on which the Commission received the Notice of Appeal unless special and extraordinary circumstances require a longer period.

(g) The order of an appeal panel should be issued within twenty-one days of the date of the hearing.

The appeal panel should hear evidence at the hearing only on the matters that were specified in the Notice of Appeal, including evidence regarding facts or events that developed or occurred after the date of the hearing. Evidence regarding facts or events that existed or occurred before the date of the original hearing should be received only if the party advancing such evidence establishes that he did not have the evidence and could not reasonably have had it at the time of the hearing.

The matter of onus, or burden, of establishing a case is dealt with in subsection 117(5) of the 1979 Act. It is stated there that the findings of fact set out in the reasons for the decision or order being appealed "may be taken to be true" unless the party appealing files and serves a statement of the findings of fact with which he disagrees. It might be inferred from this that the filing and serving of the statement would invalidate the findings made by the Commission and that the party who established the facts in the first instance would have to prove them over again. That may not have been the intention of the drafters, but the Act leaves the matter of who has the burden of establishing the case on appeal up in the air. Nor is anything said about this important matter in the Guidelines. It is reasonable to assume that, by substituting the procedures detailed in section 117 of the 1979 Act for the direction in the 1975 Act that on an appeal the Rent Review Board should proceed by way of a hearing *de novo*, the drafters of the 1979 Act intended to put some burden on the appellant(s) that he would not have had in the event of a trial *de novo*.

Recommendation 37. **The appellant or appellants in an appeal from a whole building rent review order should be required to carry the burden of proof to show that the Commissioner erred.**

8.5 Percentage of Tenants

It is proposed in this Report that tenants' appeals from whole building rent review orders or tenant-initiated rent correction hearings should be authorized by a certain percentage of the tenants.

Something of this nature seemed imperative since the tenants in a complex of two or more units are not an organized group like a trade union or professional society that can give expression to a common will or intent. Yet on some occasions the tenants should be regarded as a group. For example, one or several tenants may wish to pursue an appeal or seek a whole building review. If they exercise the right to do so, they will inevitably involve not only the landlord but all the other tenants, since the appeal or review may cause a delay in settling rent obligations and may on occasion result in substantial expense. Moreover, the outcome will not necessary be favourable to the tenants. If the grounds for the proposed action are *bona fide* and there is a reasonable expectation of success, then a representative group in the complex would probably be prepared to approve the venture.

The size of that representative group should be in proportion to the number of rental units in the complex that are occupied by rent-paying tenants. The action the tenants wish to take should be authorized by the signatures of the members of the representative group living in at least the specified percentage of the occupied units in the complex. To qualify as a signatory, a person should be at least eighteen years of age and a tenant or sub-tenant of the unit as defined in clause 1(*s*) of the 1979 Act.

If the landlord and the tenants disagree on the number of units occupied by rent-paying tenants or subtenants or whether all the signatories were qualified to sign the authorization, the disagreement can be referred to a Commissioner. After considering the material and, if necessary, hearing the parties, the Commissioner should decide whether the authorization is validly executed and his decision should be final.

Chapter 9

Calculation of the Rent Increase

9.1 Introductory Comments

A great deal was said on behalf of landlords and tenants during the Inquiry with regard to deficiencies in the scheme of rent review in Ontario. Landlords alleged that rent increases were so restricted that the ownership of rental properties was no longer profitable and that forced sales could result. Many owners of small complexes said that what they had hoped would be an investment to provide a retirement income had become a loss operation. Tenants, on the other hand, felt strongly that rents were being allowed to increase to levels that were no longer affordable to many people, such as those with low incomes and elderly people living on fixed incomes.

Theoretically, however, the effect of the cost-pass-through method is to maintain the economic status of the residential complexes to which it is applied. If the property was profitable at the time that rent control was imposed, in theory the dollar amount of that profitability would be maintained.[1] If it was losing money, rent review would normally allow the loss to be eliminated, and under the 1979 Act, an allowance to relieve hardship might be made. In practice, however, the landlord's net income is not held constant, for a number of reasons described in Chapter 11. But the deviations that result are not based on the landlord's or the tenants' overall economic position or on a market-determined return or a fair return on the funds invested in the building. Nor is the calculation of rent increases concerned with maintaining or improving the affordability or availability of rental housing. Essentially the only question for the Commission is whether increases in costs justify an increase in rents in accordance with a set of rules that are, in some cases, rather arbitrary.

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[1] However, the cost-pass-through system does not explicitly take into consideration the depreciation in the value of money in that the landlord's net income is fixed.

What rent review in Ontario does is limit rent increases to an amount equal to the increase in the landlord's costs. An important feature of the process is the scrutiny of the landlord's figures to ensure that only allowable cost increases are recovered in the rent. In the long run the system does not protect the tenants from the full effect of the added costs, although in certain circumstances it extends the effect of added costs over a number of years. Under the cost-pass-through system, rents are not related to market levels. The extent to which the system keeps rents below market levels, if it does so at all, is an incidental outcome of the operation of the system.

In the title of this chapter the word calculation is used, rather than determination, to emphasize that the process in its final stage is an arithmetic operation. An exercise of discretion is required in determining some of the components of the calculation, such as whether a cost should be allowed, how long the amortization period of a capital cost should be, whether a financial loss should be recovered in the Projected Year or over a number of years, or whether there should be a monetary adjustment for failure to maintain standards of maintenance and repair. The final step in arriving at the amount of the rent increase is nevertheless an arithmetic calculation. The calculation to be made in this regard is set out in the Guide as follows (Item 16, p. 9):

		Total Amount Allowed by the Commission
a)	Increase in operating costs [in the Projected Year]	$
b)	Annual write-off and interest on capital expenditures	$
c)	Increase (decrease) in financing costs	$
d)	Cost correction (subtract if negative)	$
e)	The amount of financial loss, if applicable	$
f)	Relief of hardship, if applicable	$
g)	Total justified increase	$

The various items are discussed below.

9.2 Increase in Operating Costs

The items commonly entering into the category of operating costs are listed in the Cost Revenue Statement. Spaces are provided in the statement in which to insert the cost of each item in Year 1, Year 2, and the Projected

Year; and the "Change [in the] Projected Year over Year 2". The total of the increases less the decreases is the amount carried into the calculation of the rent increase. Although most items of operating costs, such as insurance and taxes, do not call for special comment, others are somewhat contentious. Among them are management and administrative overhead, consultants' fees, and vacancies and uncollectable rent.

9.2.1 Management and Administrative Overhead

The figures for management and administrative overhead are entered on line (h) in item 7 of the Cost Revenue Statement. This sub-item is dealt with in the Guide as follows:

> This should be computed as being not more than 5 per cent . . . of total revenue . . . .
> This means of allowing for overhead is in lieu of receipted expenses.
>
> Should management and administrative expenses exceed 5% . . . of total revenue . . . and if they are reasonable and verifiable, they should be itemized in detail . . . and no entry should appear on Item 7 line (h).
>
> Should the landlord in Item 7 line (h) claim less than 5% . . . of the total revenue, management and administrative overhead costs may be accepted to a maximum of 5% . . . . [In the case of mobile home parks the rate is set at 10 per cent]. (p. 4)

Although it was not denied that expenses for management and administration are legitimate operating costs and that they are constantly increasing, the treatment given to them in the Guide was criticized by both landlords and tenants. The Commission's approach was adopted because this category of costs includes many different kinds of expenses occurring frequently in small amounts and at irregular intervals, and the problem of assembling, checking, and verifying the information could become a burden out of proportion to its significance in the rent review process. Landlords who accept the set amount of 5 per cent of total revenue spare themselves, the tenants, and the Commission that burden; those who seek something more may be required to submit a detailed statement with complete and properly organized supporting material.

The tenants' objection to the procedure contemplated by the Guide is that landlords whose costs are, in fact, less than the 5 per cent limit would nevertheless be allowed to use the amount so determined as the base for claiming an increase to be passed through into the rents. That could happen, but the problem should be viewed in relation to the amounts of money that may be involved. Only the increase in the amount of the item is carried into the calculation of the net increase in operating costs. Provided the same percentage of total revenue is applied in both Year 2 and the Projected Year, the amount of the increase in this sub-item is only 5 per cent of the permitted rent increase. In the case of a unit where the permitted rent increase for the year was $500.00, the increase in the amount of management and administrative costs included in the total increase would be 5 per cent of $500.00, which would be $25.00 or $2.10 a month. The share of the actual increase in administrative and management overhead that could be allocated to the unit might be greater or less than the $25.00 allowed, but the size of the error would necessarily be small.

The increase allowed for management and administrative overhead is determined by two items: the percentage of revenue allowed (at present 5 per cent) and the percentage increase in revenue justified by all the cost items. However, increases in financing costs and financial loss and allowances for capital expenditures, cost correction, and hardship are not relevant indicators of the rate of cost inflation that affects the landlord's operating costs, including management and administrative overhead. It would seem more reasonable to relate the increase in management and administrative overhead to the increase in other operating costs than to the increase in total revenue.

***Recommendation 38.* In both Year 2 and the Projected Year, management and administrative overhead should be determined as a fixed percentage of the total of all other operating costs.**

Since operating costs are thought on average to take half of the total revenue, the fixed percentage for the allowance for management and administrative overhead might reasonably be adjusted from 5 per cent of revenue to 10 per cent of operating costs. It is recognized that 10 per cent is no less arbitrary than the 5 per cent used at present; however, it permits the increase to be based on a better estimate of the inflation of costs faced by the landlord.

This approach also has the advantage that the calculation of the allowable amount for management and administrative overhead in the Projected Year is greatly simplified. It will simply be 10 per cent of the total of relevant costs, instead of 5 per cent of total revenue, which itself depends upon the allowance for management and administrative overhead.

The Commission has adopted a reasonable approach to determining management and administrative costs in not requiring landlords to itemize those costs. What is not found in the Guidelines or in the Guide is a justification for choosing 5 per cent of revenue as a fair approximation of the amount of this item of cost. The only indication that the 5 per cent figure (or by inference the 10 per cent of operating costs suggested) may be reasonable—or at least not too low—is that landlords apparently consider the resulting increase adequate since they rarely itemize their costs for management and administrative overhead. For the reason noted above, however, a change in the percentage to, say, 4 per cent or 6 per cent would have only a minimal effect on the total justified rent increase. Landlords who consider that the cost pass-through resulting from using an allowance of 5 per cent of revenue is too low have the opportunity to bring in their bills and establish a larger amount.

9.2.2 Consultants' Fees

The fee paid to consultants in connection with the preparation and presentation of the landlord's case before the Commission is also considered to be an operating cost. This item of a landlord's expenses is referred to as "outside service for rent review" in the Guide and is dealt with at length in Rent Review Guideline No. RR-18:

> It is the opinion of the Commission, therefore, that in determining the total justified rent increase for a residential complex, it would be in order to consider proven fees of a consultant retained by a landlord for the purpose of preparation and presentation of a landlord's application for whole building rent review before the Residential Tenancy Commission. It would also be in order to consider such a consultant's fee, on a whole building rent review, which was incurred during the accounting years being considered, for the purpose of assisting the landlord in defending an application or an appeal before the Residential Tenancy Commission. (p. 1)

The Guideline continues with a discussion of what the Commissioners should consider when deciding whether to allow consultants' fees as a cost and suggests how the amount should be determined. The reason given by the Commission for taking the position it does is stated in the Guideline as follows:

> It is clear, in the opinion of the Commission, that specialized consultants' fees incurred by a landlord for the general purposes of his business of operating a rental residential premises, including a landlord's application for rent review, may properly be considered by the Commission . . . . (p. 1)

The same point was made by a witness for the landlords' interests during the Inquiry:

> I would say the fees ought to be passed through because consultants'

> fees are just one more component of the very professional fees which landlords incur. And really, they are indistinguishable from any other professional fees . . . . A landlord does not go to rent review voluntarily. A landlord goes to rent review to either maintain his position, i.e., retain his level of net income or he goes there to mitigate his loss. (Transcript, May 2, 1983, pp. 112-3)

The witness also noted that a tenant's application disputing an increase of 6 per cent or less under section 127 is not a financial review; hence, there is no way for a landlord to recover his costs of representation:

> The landlord decided not to go to rent review. If a tenant chooses to oppose the 6 per cent, I think that is something the landlord has to live with. (Transcript, May 2, 1983, p. 114)

The tenants' position was stated by counsel for the tenants' interests as follows:

> It is our proposal that, insofar as the hearing before a Residential Tenancy Commissioner is adversarial, at least to the extent that each party is entitled to representation, that the fees of the representative should be treated like costs in any other adversarial matter. Which in fact leads you to two options: Either you can treat costs the way, for example, a labour arbitration would, which would be that everybody bears their own costs; or you could tie the costs to the degree of success, and let the parties make submissions about that to the Commissioner, as you would find in any civil court. (Transcript, August 25, 1983, p. 31)

That submission made by the tenants calls for comment, particularly the remark that the consultant's fee should vary with the landlord's success. It has been a guiding principle throughout this Report that the adversarial aspect of the rent review process should be minimized. Even though on occasion the participants no doubt consider the process to be an adversarial one, the function of the Commissioner is not to name a loser or winner but to determine, in accordance with the statutory directions, the amount of the rent increase the landlord is entitled to charge.

This Report is not in disagreement with the position taken by the Commission in Rent Review Guideline No. RR-18 and the treatment it gives to consultants' fees. It is apparent, however, from the Commissioners' written reasons for their decisions and from the statistics on rent increases asked for and allowed that some landlords advance excessive claims, which they are unable to support. Where, in the opinion of the Commissioner conducting the hearing, a consultant has been a party to that kind of abuse of the process, the fee allowed for the consultant's services should be reduced, if not disallowed entirely. The services of the consultant, when properly employed, should be of assistance to the Commissioner and through him the tenants, as well as to the landlord, in arriving at the correct rent increase. A certain amount of tactical manoeuvring is perhaps unavoidable, but consultants who engage excessively in those practices should not be rewarded at the expense of the tenants.

It should be pointed out that a consultant's fee is not an operating cost in the ordinary meaning of the word, that is to say, a cost that recurs from year to year whether or not the landlord goes to rent review. Rather, it is a special cost that landlords may reasonably incur because of the exigencies of the rent review process. Consequently, consultants' fees may give rise to costs no longer borne or compounded rent increases for the same cost item if the landlord applies for whole building rent review more than once. This problem is dealt with in its general form in section 11.1, which recommends that base-year review be introduced for landlords returning for second and subsequent whole building reviews.

Legal, accounting, and architectural fees may similarly give rise to costs no longer borne. This difficulty would also be alleviated by following the recommendation in section 11.1 that base-year reviews be introduced.

9.2.3 Vacancies and Bad Debts

Vacant rental units and uncollectable rents have something in common. Both are usual in the operation of residential complexes, and both reduce the net revenue that a landlord can derive from his property. In that regard they are like other operating costs, but they differ from such costs in that they may fluctuate significantly from year to year, rather than increase fairly steadily because of inflation. That being so, it is difficult to foresee what the situation with regard to vacancy costs and uncollected debts will be in the Projected Year. Taxes, insurance, heating, and maintenance costs can be expected to increase at a more or less predictable rate. That is not so in the case of vacancy costs and uncollectable rents, which are highly irregular, especially for small buildings, even if market averages are fairly stable.

The cost of vacancies and of uncollectable rents are treated differently under current rent review practice. The rental value of a vacant unit is deducted in the calculation of what is called total net unit basic rent revenue, or more simply, current revenue. Accordingly, if the landlord's other costs are such that he would suffer a financial loss or only break even in Year 2, the vacancy loss will add to or cause a financial loss and will be recovered in the following year. If vacancies were a constant and uncontrollable feature of residential property management in the way taxes are, for example, the revenue loss could best be viewed as a normal cost of doing business. The number of vacancies is, however, a matter that the landlord can control to a large extent by adjusting the rents he charges. Moreover, with the present treatment of vacancies, a permanent rent increase can be obtained by allowing units to stand vacant, thereby giving rise to a financial loss that is passed through. Therefore, it would seem better to deal with the cost of vacancies in a way that does not reduce the incentive to avoid vacancies.

Uncollectable rents are treated as an operating cost; in light of the way vacancy costs are treated, that practice is illogical. So far as the landlord is concerned, a unit that produces no revenue is the same as a unit occupied by a tenant who does not pay his rent.

Vacancies and uncollectable rents should be treated in the same way and regarded as operating costs. Because the changes in amount from year to year are unpredictable, however, these costs are not suited to a scheme of rent increases based on projected cost increases.

***Recommendation 39.* In the calculation of the increase in operating costs, losses due to vacant units and uncollectable rents should be included in costs of management and administration; hence, no separate allowance should be permitted for them.**

If the landlord is of the opinion that the net aggregate increase in the items falling under the general head of management and administrative overhead, including losses due to vacancies and uncollectable rents, will exceed 10 per cent of other operating costs, he can, as permitted by the Guide, itemize the costs separately and carry them directly into his operating costs in the Cost Revenue Statement.

In the event that the landlord itemizes his management and administrative costs, the Commission will be required to decide whether there would be an increase or decrease in the cost attributable to vacant units or uncollectable rents. That could be done by examining the five-year trend for the complex for each of those items, and calculating an average increase or decrease that could be applied in determining the amount of the item for the Projected Year.

9.3 Capital Expenditures

Paragraph 131(1) of the 1979 Act directs that

> . . . the Commission shall determine the total rent increase for a residential complex that is justified by,
>
> (*a*) the findings of the Commission concerning . . . capital expenditures that the landlord has experienced or will

> experience in respect of the residential complex . . . .

The treatment to be given to capital expenditures by Commissioners is stated in Rent Review Guideline No. RR-3:

> Although the approach under the Rent Review part of the Act is to consider the increases in various costs from year to year, it is obvious that certain expenditures will be of a nature whereby their benefit will be realized over a number of years and the expenditure itself will not be repeated in each year of the operation of the residential complex.
>
> This type of major expenditure should be recovered in the form of increased rents over a number of years rather than in total in one single year. (p. 1)

As it is put in the Guideline, the expenditure is to be recovered by amortizing it over the estimated useful life of the asset concerned (p. 2). In practice, the Commission, after determining the cost of the asset, decides by reference to a schedule of life expectancies accompanying the Guideline that the asset has, say, ten years of useful life. The capital cost of the asset is treated as a debt payable over that period, and the amortization amount is the annual cost of retiring the debt by blended payments of principal and interest. The interest is calculated at an imputed rate "deemed by the Commissioner to be a reasonable average rate that may be anticipated over the life of the capital improvement" (Guideline, p. 3). The method of arriving at this rate is left to the discretion of the Commissioner. After the amortization amount has been determined, the present practice is that even if the interest rate changes there will be no subsequent adjustment. The increased rent will not be adjusted when the amortization period has expired unless the landlord again applies for whole building review in the last year of the amortization period. The recommendation in Chapter 11 of this Report regarding rent correction hearings provides a means of correcting the anomaly that an amount added to rents for a capital expenditure generally remains part of the rent after the cost has been fully recovered.

It is a matter of considerable importance that two different types of capital expenditures are treated in the same way. What the Guideline calls expenditures of a truly capital nature, that is, expenditures for new assets for which there was no previous expenditure; and major expenditures for repair, replacement, and maintenance that repeat costs previously incurred are both allowed in full as cost increases and taken into consideration in determining the rents.

During the Inquiry's hearings, the issue was raised whether the allowance for a capital expenditure for repair, replacement, and maintenance should be the whole amount or some incremental amount. This question is not discussed in the Guideline, but it has been a matter of concern to the Commission. The chief financial adviser of the Commission, who gave evidence at the Inquiry, explained the reason for the policy. Because the problem is so important and complex, his remarks are repeated here at some length.

> I may give a little bit of background on that. Under the old program, the capital expenditures were divided into two categories. One was in the nature of major repairs and replacements and the second was in the nature of additions and improvements. And the treatment of the two categories was different.
>
> As far as additions and improvements were concerned, a write-off allowance as well as interest was allowed. But for repairs and replacements the policy was that it will be only a straight write-off. If it is $10,000 spread over five years, the write-off will be $2,000 a year, and no interest was taken into account.
>
> Now the logic there was that really speaking, when the capital expenditure which is in the nature of a replacement is being incurred, only the incremental costs should be capitalized because the original cost has already been built into the rental structure.
>
> But strictly to do that would require a lot of records and paper work involved, because you have to keep track of the original costs and make all sorts of adjustments.
>
> So, it was felt that probably as a rule of thumb, in those cases where the capital expenditure was in the nature of a replacement, rather than doing that double adjustment, you could just allow only a straight write-off without any interest, and that would be adequate and suit the needs.
>
> Now, that was the policy as far as the earlier program was concerned. But a lot of representations were being received from the landlords on that issue, and it was being represented that interest should be allowed, both for repairs and replacements as well as additions and improvements.
>
> Now, when the Commission was formed and in the formative months when the guidelines were being—the old guidelines were being reviewed to determine to what extent they should be adopted by this Commission, it was decided that that policy should be changed and interest should be allowed on both categories of items.

So, at that time, the distinction was done away with.

Now, later on, again representations are being made from tenant groups that when capital expenditures in the nature of repair and replacement is incurred, there should be some adjustment for the original cost of the asset.

But there are several reasons why that type of adjustment may create some problems and why it may not be the proper thing to do.

First, of course, is the administrative problem that if that type of adjustment has to be done, that will mean you have to keep track of all that's happened in the past. You have to keep track of all the work which has been done in the past, what was the cost, and additional work involved for both the landlords as well as for the Commission staff.

The second problem there would be of the incentive to the landlords. But as it is now, when a capital expenditure is fully allowed, whether it is of a replacement or an addition, there is an incentive to the landlord to do that type of capital expenditure, and it does result in better—overall average better maintenance of the building.

For example, supposing a landlord has a fridge which has become old. If he knows that he is not going to be allowed a full write-off on that, then his incentive will be, or motivation will be to keep on having that fridge repaired, because the repair costs will be charged to the operating costs and he's going to get benefit out of that.

But if he knows that by replacing that he can get the full allowance, then he may have more motivation to replace that rather than keep on having it repaired.

The third problem is if you have to have that type of adjustment, then the Commissioner has to ensure himself that the costs have actually been recovered, if the actual costs were, say, $10,000 in the initial stage. Now whether it has really been in actual practice fully recovered or not, that's a problem. And I believe that was one of the issues made in earlier evidence, also that it's difficult to really ensure that.

Fourth is that if you have to do that type of adjustment, then it raises questions of some other complex adjustments which will have to be made, like what happens when an asset, its useful life is over, but it is not replaced? What do you do at that time?

Another situation is what do you do if an asset has to be replaced

> prior to its useful life is over? Supposing when the write-off was allowed, it was expected it would last for ten years, but it actually lasted for seven years. At that stage it is replaced. Now, certain complex adjustments will have to be made at that stage.
>
> The other problem is that if you say, okay, when a replaced capital asset is again—when an asset which is being purchased is in the nature of a replacement, and adjustment has to be made, whether you make that type of an adjustment only to those assets which were specifically allowed as a result of rent review, or do you extend that policy to all the assets even when they were not specifically reviewed or considered at a rent review hearing?
>
> The problem there would be, if it is decided that this should be extended, then should it be extended only to those assets which were specifically considered as a result of rent review hearing and a write-off allowance was allowed, or should it also extend to those assets which were completed by the landlord but did not really figure at a rent review hearing and no specific allowance was made for them.
>
> And if you decide that, yes, that policy extends to that, then the question arises, should it extend only to the hearings conducted under the *Residential Tenancies Act*, or should they also extend to hearings conducted under the previous program?
>
> So, these are the various problems which would arise, and based on that it was said that the balance of advantages would lie in continuing the present factors. (Transcript, July 22, 1983, pp. 21-25)

Theoretically, current expenditures for repair, replacement, and maintenance should be reduced to the extent that an allowance for a previous expenditure for the same item has already been allowed and built into the rent being collected by the landlord. However, the burden and complexities this would create for both the Commission and landlords and the resulting delays in the review process were compelling practical reasons for finding another way of dealing with the problem. Even more important, the incentive effect of allowing a full pass-through of capital repair and replacement costs is a persuasive reason for continuing that policy.

From the viewpoint of private landlords, the operation of residential tenancies is a business and their decisions as to how they manage their properties are governed by business reasons. If, under rent review, landlords were allowed to recover only the incremental costs of capital repairs to their property and of replacements for obsolete and worn-out equipment while, at the same time, the controlled rents were conducive to high occupancy rates, they would tend not to incur those expenditures.

Because it is desirable to maintain residential rental housing in a reasonable state of repair, the pass-through of the full capital costs incurred in that regard is justified, provided it is possible to reduce the resulting increased rents after the costs have been fully recovered.

Landlords disagree with some of the Commission's practices regarding capital expenditures for several reasons. For one thing, if the capital expenditure is incurred in Year 2 of the review period, an allowance for the expenditure will not be included in the rents until the Projected Year. If the landlord borrowed money to finance the project, he will have incurred interest costs; if he used his own money, an imputed interest cost should be recognized. It is understood that the practice of the Commission is not to include this interest in determining the amount of the capital cost allowance that will enter into the calculation of the rent increase (Transcript, September 7, 1983, p. 61).

***Recommendation 40.* When calculating a landlord's total capital expenditure, the Commission should include actual interest paid in financing a capital expenditure to the end of Year 2 or imputed interest at the current borrowing rate.**

A further cause for concern among landlords is that when a capital project giving rise to an expenditure will not be taken in hand until the Projected Year, the Commissioner may not be prepared to include an amount in the permitted rent increase for a future expenditure. The Guideline has this to say about rent increases to cover future expenditures:

> In making a finding with respect to capital expenditures which a landlord has experienced or will experience, as required by subsection 131(1)(*a*), it is the opinion of the Board of Commissioners that Commissioners should be very cautious when considering a capital expenditure based solely on an applicant's proposal to carry it out in the future, without being fully and absolutely satisfied that it has in fact been committed to be done, together with a firm, committed schedule for completion within a reasonable period of time. While in the opinion of the Board of Commissioners, a Commissioner may take a proposed capital expenditure into account in his consideration under subsection 131(1)(*a*) of the *Residential Tenancies Act*, it may be difficult to satisfy a Commissioner that such a proposed capital expenditure will in fact be carried out as proposed, and that it is therefore preferable to restrict such

> consideration to those capital expenditures which have in fact been fully completed, or perhaps are in the process of being carried out at the time of the hearing before the Commission, and for which clear evidence may be presented to fully satisfy the Commission.

This position was modified in evidence given to the Inquiry by a witness for the Commission:

> Q. Now, having regard to that statement of expressed opinion by the Board [the statement quoted above], is there any reason why a commissioner shouldn't allow a projected capital expenditure, if he or she is convinced on the evidence that the contract is likely to be completed in a reasonable time?
> A. No. There is no reason. In fact, the legislation is really obligatory on the commissioner to consider that. And if he is satisfied that the particular expenditure is likely to be completed in the projected year, I think he should allow that. (Transcript, July 22, 1983, pp. 28-29)

The Guideline's instructions on this matter are inconclusive, and the comment by the witness does not conform to the Guideline.

It is understood that in practice the Commissioners tend to include a capital cost allowance in the rent increase for the Projected Year only for completed capital expenditures. The position taken in this Report is that, provided the landlord's actual or imputed interest costs are included in the capital cost of the asset, an allowance should not be made for proposed expenditures. The landlord's financial position would be protected in that he would recover actual or imputed interest incurred up to the time when the increased rents take effect (beginning in the Projected Year). The tenant would be protected against the possibility of having to pay, in the Projected Year, a rent increase that could not be recovered, even if the increase was retracted in the following year when it was found that the capital expenditure had not been incurred. Moreover, the Commissioner who conducted the hearing would be relieved from having to make a very difficult discretionary decision.

Another aspect of the Commission's treatment of capital expenditures that was criticized by counsel for the landlords was the rate of interest allowed as a factor in calculating the allowance for a capital expenditure. This matter is dealt with in the Guideline, but the recommended course of action is not clearly expressed. The Guideline distinguishes between the cases where the landlord borrows to finance a capital project and where he uses his own funds. In the former case the policy is that:

> Whenever possible, the actual expenditures for principal and interest should be used as the basis for determining rent increases which are justified. (Rent Review Guideline No. RR-2, p. 2)

Where, however, the landlord uses his own funds the policy is expressed as follows:

> To determine the rate of interest to be used, the Commissioner should allow an imputed interest rate which is deemed by the Commission to be a reasonable average rate that may be anticipated over the life of the capital improvement. One suggested method of arriving at such an imputed interest rate is to take an average interest rate for a prior period of time, e.g. a prior five-year period . . . .
>
> The annual cost should be calculated using a blended payment of principal and interest over the anticipated life of the asset. (Rent Review Guideline No. RR-3, p. 3)

The Commission's policy is stated more explicitly in the Guide under the heading "Capital Expenditures".

> The Commission may consider as a justifiable cost both the write-off amount of a capital expenditure based on its expected useful life, and interest on such capital expenditure.
>
> The calculation of the amount of the annual write-off and interest allowed will be based on the blended payment method.
>
> The interest amount allowed shall reflect a reasonable rate and shall be either the actual or anticipated rate on the funds borrowed or, in the case of equity financing, an imputed interest rate which is deemed by the Commission to be a reasonable average rate that may be anticipated over the life of the capital improvement. (p. 5)

The last paragraph quoted above makes the distinction between borrowed funds and what is called equity financing, which presumably means the landlord's own funds. It is not clear how an actual or anticipated rate is to be translated into a reasonable rate. Counsel for the landlords submitted that, where a landlord borrowed to finance a capital expenditure, he should be allowed interest at the rate actually paid and, if he used his own funds, at the current borrowing rate.

The problem with the position taken by the Commission and by the landlords' counsel is that the interest rate at the time the money is borrowed will in all likelihood change, possibly quite substantially, during the amortization period. The Commission has only one opportunity to set the amount of the allowance for principal and interest that will be included in the rent increase, and, once determined, the interest rate cannot be changed. Yet there is no reason to believe that the prime borrowing rate at the time the funds are borrowed is the ideal rate for the purpose, especially in times when interest rates fluctuate widely. Moreover, it is difficult to understand why the calculation of an allowance for capital expenditure to be passed through to tenants should be different for tenants whose landlord has borrowed and those whose landlord has used his own funds.

Recommendation 41. **When calculating the allowance for a capital expenditure, whether financed by borrowing or by a landlord's own funds, the Commission should use an imputed interest rate based on a long-term borrowing rate.**

9.4 Financing Costs

If rent control were a matter only of limiting a rent increase to an amount that would cover the landlord's increased operating costs and any capital expenditures, it could be a relatively straightforward operation. There is some indication that when the legislature passed the 1975 Act, that is all it intended. Clause 7(3)(*a*) of that Act provided that a Rent Review Officer could approve an increase sought by a landlord if he was satisfied that increased operating costs and capital expenditures justified the increase, and clause 7(2)(*b*) directed the Rent Review Officer to consider whether the increased rents sought by the landlord were necessary in order to prevent the landlord from suffering a financial loss in the operation of the building. The 1975 Act did not specifically provide for increases based on increased financing costs, nor did it specify whether or not financing costs, as well as operating costs, should be considered in determining whether the landlord was suffering a financial loss. Nevertheless, it is apparent that the administrators of the 1975 Act interpreted operating costs to include financing costs, for the material prepared for the information of Rent Review Officers dealt with the treatment of financing costs.

The paragraphs that follow summarize the memorandums regarding financing costs written in 1977 and 1978 by the Technical Support Group for the Rent Review Program of that time.

1. Payments of principal and interest on money borrowed were recognized as costs that could be passed through to the tenants.
2. Higher interest resulting from the renegotiation of an existing mortgage

was a legitimate pass-through item if the new interest rate was in accord with the fair market rate.

3. Higher payments due to a shortened amortization period would not be passed through.

4. Financing that led to higher principal and interest charges would not be recognized as costs to be passed through unless the funds were reinvested in the building.

5. The owner was required to have reasonable equity in the property—15 per cent was normally considered reasonable. In certain approved new projects, financing costs of up to 95 per cent were allowed.

6. A notional mortgage with blended payments could be substituted for balloon-type mortgages in determining an increased financing cost pass-through.

7. A reduction in the landlord's financing costs would not justify a decrease in rents, except to offset a previous pass-through of financing costs.

8. Other methods of financing, such as sale and lease-back, corporate debentures, and so on, were to be treated in a similar manner to mortgage financing.

The principles that were developed under the 1975 Act were adopted by the Commission when it took over the administration of rent regulation under the 1979 Act and are still in play. That was clearly the intent of the legislature, for the 1979 Act specifically recognizes financing costs as an item to be taken into consideration in determining justified rent increases:

> 131.-(1) Where an application is made by a landlord under section 126, the Commission shall determine the total rent increase for the residential complex that is justified by,
>
> (*a*) the findings of the Commission concerning operating costs, financing costs and capital expenditures that the landlord has experienced or will experience in respect of the residential complex.

The treatment of financing costs by the Commission is the subject of Rent Review Guideline No. RR-2, entitled "Financing Costs", and of the section headed "Financing Payments" in the Guide (p. 6). The treatment of financing costs is also considered in Chapter 11 of this Report in connection with the topic of termination of cost items (or costs no longer borne). As noted above, the treatment is a continuation of the policies developed under the 1975 Act.

An increase in the principal amount of existing debt is passed through only if the new funds are reinvested in the building. For example, an expenditure for an addition to the premises or for new equipment or facilities, such as fire protection or security, could require financing.[2] When, however, financing costs result from the purchase of a residential complex, they may be passed through only to the extent that a higher rent is necessary to eliminate a financial loss. The treatment of financial loss is dealt with in section 9.5. Despite the confusing similarity of the terms "financing costs" and "financial loss", they refer to separate items that do not always occur together.

Three distinct issues regarding financing costs arose during the hearings in the first phase of the Inquiry. They are discussed separately below, although they cannot be resolved without reference to their overall effect on the landlord's return on equity—an issue that has been reserved for consideration in the second phase of the Inquiry.

9.4.1 Principal Repayment Allowed

The policy of taking into consideration the payments on account of the principal of the debt incurred by a landlord in the purchase of a residential complex when determining rent increases is discussed in Rent Review Guideline No. RR-2:

> A number of principles emerge from an examination of the Act, and from an attempt to make findings which most accurately reflect the annual costs incurred in the operation of a residential complex . . . .
>
> In order to formulate a policy for the treatment of financing costs, the Board of Commissioners had to make a choice as to the most appropriate method of permitting recovery of the annual cost of borrowed money. Essentially the alternatives are:
>
> (*a*) to consider the interest cost only on loans and allow a charge for depreciation or,
>
> (*b*) to consider repayments of principal and interest and exclude any consideration of depreciation.
>
> Although the selection of an alternative based on depreciation would be in accordance with generally accepted accounting principles, there are a number of practical difficulties associated with this alternative, such as the selection of the proper method of

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[2] Most expenditures that would require new funds that are reinvested in the building would qualify as capital expenditures.

> calculating depreciation, and the appropriate method of dealing with changes in the undepreciated capital cost when a sale takes place.
>
> The industry and the public generally are "cash flow" oriented. All landlords and tenants understand that principal and interest payments must be made periodically. The concept of blended payments is also readily understood. Accordingly, the treatment of financing costs should follow, in most cases, a "cash flow" approach which permits charges for principal and interest payments even though it is not a method which coincides with generally accepted accounting principles. (pp. 1-2)

That comment assumes that a landlord should recover out of the rents the cost of financing the purchase of the complex, either by way of a depreciation allowance or by the inclusion of principal payments. That assumption has been attacked by tenants' advocates. They claim that the rent paid by the tenants buys the building for the landlord, and they refer to the tenants' investment in the property. However, the landlord may be paying off the mortgage with the return on his equity investment. The owner, like the mortgager, needs a return on his investment, which he can receive either as income or as an increase in the net value of his equity. The issue is not simply whether the landlord's equity is increasing but whether the return he is earning on the investment, taking into account the income flow in hand and the increase in equity value, is greater than, less than, or equal to, a return that he could earn on other investments of similar risk.

If investors see that the return that can be earned by investing in residential tenancies is too low, they will not make such investments. It is not the intent of rent regulation in Ontario to close down the market for residential tenancies. However, the Inquiry was told repeatedly by owners of small apartments that they could not find buyers for their properties who would pay what the owners thought their properties were worth. This situation will be reviewed in the second phase of the Inquiry.

To permit landlords to raise rents by passing through, albeit in a restricted manner, some part of the principal payments incurred in the purchase of the property is an unsatisfactory way of allowing landlords to make a return on their original investment. It cannot be known in advance whether in any particular case it works to the benefit of the landlord or the tenant, because it is not known whether it assures the landlord of more or less than a fair return on his investment in the property during the time he holds it. That cannot be ascertained without determining the net effect of all the relevant factors on the return earned by the landlord on either the original purchase price or some alternative measure of his equity base.

Because the 1979 Act does not regulate rents by reference to the landlord's return on equity, the matter did not fall within the scope of the first phase of the Inquiry. Accordingly, no change in the treatment of the principal portion of debt payment in connection with the purchase of a residential tenancy can be recommended in this Report.

9.4.2 Limit on Debt Financing

Only 85 per cent of the acquisition cost of the property can be brought into the calculation of the rent increase. That is a rule that was established as rent regulation policy under the 1975 Act and was continued by the Commission under the 1979 Act. Rent Review Guideline No. RR-2 states the matter in this way:

> [T]he operation of rent review would create unfair results if it rewarded those purchasers who have the least amount of investment on purchase at the expense of tenants and at the expense of those purchasers who invest more of their own capital and borrow less for the acquisition and hence would be penalized for having done so.
>
> Accordingly, the Commission must make some assumption as to a "normal" or fair cash investment which a purchaser of a residential complex should have in a building for purposes of rent review.
>
> There is little independent, objective information available to assess the fairness of any percentage figure chosen. However, a requirement that a purchaser should invest at least 15% of the proven acquisition cost of the building and that financing costs based on a maximum of 85% of proven acquisition costs be considered, appears to be a fair approach. (p. 4)

The "fairness" reason given by the Commission for applying the 85 per cent rule is not persuasive. If fairness for landlords were the objective, it could be achieved by allowing a landlord who wished to invest his own capital in the purchase of a complex an imputed return on that investment that would be added to the actual payments of interest or debt in calculating the financing cost of the complex. The 85 per cent rule does not reduce the preferential treatment of purchasers "who have the least amount of investment on purchase." It simply lowers from 100 per cent to 85 per cent the ceiling up to which it benefits the purchaser to increase his debt financing.

A reason for the policy, which is not reflected in the Guideline, could be that it was intended to modify the impact on rent increases of treating principal payments on debt as though they were operating costs to be taken into consideration in the determination of rent increases. Furthermore, since the allowance of repayment of principal, which provides a return on equity, is included in the allowable financing costs, it would constitute an excessive allowance if the landlord's equity were nil. Whether 15 per cent equity creates the right balance between these factors depends on individual circumstances. As with the other issues identified in this chapter, the real issue at stake is the adequacy of the landlord's return on equity—which is beyond the scope of the first phase of the Inquiry.

9.4.3 Notionalizing Financing Costs

In determining the allowable financing costs, the Commission does not necessarily recognize the actual repayment terms of a landlord's debt. For example, a mortgage requiring irregular payments will be converted into a notional mortgage with blended payments of principal and interest over a reasonable amortization period to "more accurately reflect the re-payment expenditure on an annual basis." A stated interest rate will also be adjusted if it is considered to be out of line with market rates at the time of financing. The policy of the Commission is stated in Rent Review Guideline No. RR-2:

> Whenever possible, the actual expenditures for principal and interest should be used as the basis for determining rent increases which are justified.
>
> However, the repayment terms of a loan transaction frequently require the repayment of principal and interest on a basis other than a uniform blended payment for a reasonable amortization period. In addition, the actual form of a loan transaction might dictate an interest rate higher than one would find if the transaction had taken a more usual form. In such cases, it would be in order to recalculate the mortgage terms to convert it to a notional mortgage which admittedly is artificial, but which would more accurately reflect the re-payment expenditure on an annual basis.
>
> If this were not done, rentals would rise significantly in those years where large financing costs were incurred by reason of large principal re-payments or short amortization periods with no compensating reduction in those years when no such expenditure was incurred.
>
> A re-calculation of interest rates would be in order so that the operation of rent review would not reward those landlords who offer the least amount of security to a lender and therefore incur the highest interest rates, and penalize those who offer the greatest security and hence can obtain the lowest interest rates. (p.2)

The policy has been criticized by landlords. They argue that financing terms are not negotiated to benefit landlords at the expense of tenants but are determined by the exigencies of the transaction and the state of the financial market; that the amount of security a landlord can provide may determine whether he can borrow at all but will have only a marginal effect on the rate of interest that is charged; that interest rates vary considerably from time to time, changes are unpredictable and the Commissioners are not qualified to say what the ideal terms for a transaction should be; and that the imposition of artificial terms for rent-setting purposes results in losses that cannot be recovered.

This issue was of such importance to landlords that they have challenged the right of the Commission to notionalize mortgages in the courts. However, judicial decisions in Ontario up to the level of the Divisional Court have confirmed that the Commission has the discretion to substitute, for rent review purposes, the financial terms it considers suitable for those actually agreed upon by the landlord.

There is a compelling practical reason for the Commission's policy, which is that, so far as the Commission is concerned, a rent review hearing is a one-time operation, even though in practice a landlord may make successive rent review applications and, indeed, can be expected to do so when seeking to pass through a financial loss. However, when the Commission orders a rent increase, it is powerless to bring the landlord before it again in order to revise the calculations on which the ordered rent increase was based. By converting the terms of mortgage payments to blended payments of principal and a level interest rate over the life of the notional mortgage, the Commission removes the incentive for landlords to repay their debt more quickly in order to justify a larger rent increase.

As is discussed above, passing through the principal portion of mortgage payments provides a return on the landlord's equity. If the repayment schedule were not controlled, the amount of the principal repayment passed through could be made arbitrarily large; hence, in relation to the landlord's original investment, the return on his equity could be made arbitrarily high. The only constraint would be the maximum rent that the market would bear. Although notionalization is used to protect tenants against large rent increases, Commissioners should attempt to use terms that would have been obtainable by the landlord, taking all the relevant circumstances into account.

9.5 Financial Loss

The provisions of the 1979 Act regarding financial loss are in section 131 and are of the most general nature:

> 131.-(1) Where an application is made by a landlord under section 126, the Commission shall determine the total rent increase for the residential complex that is justified by,
>
> (*b*) the findings of the Commission concerning a financial loss that the landlord has experienced or will experience in respect of the residential complex.
>
> (2) In reaching its findings concerning financing costs under clause (1)(*a*), the Commission shall consider increases in financing costs resulting from the landlord's purchase of the residential complex only to the extent necessary to prevent a financial loss by the landlord.

A financial loss is defined in the Guide (p. 9) as the amount by which total revenue exceeds the total of operating costs and total financing costs.

A financial loss is a Year 2 phenomenon; it occurs when costs exceed revenues in that year. Since increases in operating and financing costs from Year 2 to the Projected Year are passed through into higher rents in the Projected Year, the financial loss will be repeated unless there is a specific provision for it. If the loss has resulted otherwise than from increased financing costs incurred on the purchase of the property, the landlord may add an amount equal to the whole loss to the rents in the Projected Year. This is described in rent review jargon as bringing the landlord to a "break-even" position.

The Commission's policy on the pass-through of financial losses as stated in Rent Review Guideline No. RR-4 is that they "should be eliminated [that is to say, passed through into rent increases] in a manner that attempts to avoid unnecessary hardship to landlords and tenants alike" (p. 2). The treatment that Commissioners are to give to such losses to set out in the Guideline as follows:

> Where a substantial loss results from other than normal operating circumstances [the reference is to financial loss resulting from the purchase of a residential complex] a rental increase may be justified which would be sufficient to bring a landlord to a "break-even" position over a period of time up to five years. This would result in an order for the period under review which would eliminate only a portion of the anticipated loss. (p. 1)

The Guideline was revised in November 1982 just before the 1982 Interim Act was passed. Before the revision the period of time was three years. That policy was developed by the Rent Review Program under the 1975 Act and continued by the Commission under the 1979 Act. The comment in Rent Review Guideline No. RR-2 is that subsection 132(2) of the 1979 Act is "... a clear statement that the full increase in financing costs which arises from a purchase of the property is not to be considered" (p. 3).[3] As a result, he would have to cover the financial losses in the first and second year from other sources, and in that regard Rent Review Guideline No. RR-4 says:

> It would not be appropriate for the Commission to allow interest on any borrowings by a landlord, made to finance any losses from the spreading or extended spreading of the pass-through of the financial loss. (p. 2)

When a financial loss is allowed and the financial position of the complex is raised to the break-even point, the landlord normally also qualifies for a relief of hardship allowance, which is discussed in section 9.6.

Of all the problems resulting from rent regulation under the 1975 and 1979 Acts, the treatment of a financial loss incurred on the purchase of a residential complex has been the most disturbing to tenants and the most difficult to resolve in the context of the existing scheme of rent regulation. In the three most recent fiscal years covered by the annual reports of the Commission, financial loss was a cost factor in almost one-half of all whole building reviews. In those reviews in which it was a factor, the claim for financial loss accounted for nearly one-half of the average total increase permitted (see Table 2). In most of those cases, the financial loss resulted directly from the purchase and refinancing of a residential complex.

So long as it is government policy to leave the stock of residential rental properties largely in the hands of private landlords and to impose on them the responsibility of maintaining and replenishing it, any new or revised system of rent regulation must make it attractive for investors to do so. One approach to be considered in the second phase is to explicitly allow landlords a reasonable return from this type of property; landlords could then be held to rents that would provide that return but no more. The cost of acquiring a property and the cost of adding to the structure or facilities of an existing

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[3] The Guideline provides an example of the application of subsection 131(2) when the financial loss results from the landlord's purchase of a residential complex:

> The most obvious example of the application of section 131(2) would be a residential complex which produced, prior to sale, an excess of revenue over cost. If the full amount of the increased financing costs were passed through, the complex, after sale, would produce the same amount of excess of revenue over cost for the new owner. Section 131(2) indicates that the new owner if he is heavily financed should expect no more than to break-even initially on the operation. The provision in the Act for relief of hardship might, in some cases moderate this result. (p. 3)

TABLE 2: Whole Building Review: 1980-1983, Financial Loss Factor

	1980-81	1981-82	1982-83
Total hearings	1,404	2,751	4,202
Total units	42,377	82,651	127,812
Hearings with financial loss as a cost factor			
Number	705	1,280	1,929
Percentage	50	47	46
Average total increase (%)			
All hearings	11.6	14.7	14.2
Financial loss hearings	13.9	17.6	17.8
Percentage increase attributable to financial loss			
All hearings	2.7	3.3	3.0
Financial loss hearings	6.6	8.0	8.5

NOTE: Figures before 1980-81 are not reported by factor.

SOURCE: Residential Tenancy Commission *Reports to the Minister*, 1980-81, p. 15; 1981-82, p. 18; 1982-83, p. 20.

property are an investment in property, and landlords will not make that investment unless they have a reasonable expectation of a fair return.

If rent review does lower rents, the loss of capital values by vendors is inevitable since the market value of a residential complex is based primarily on the discounted value of the anticipated net revenue from rents. It is unreasonable to expect to hold rents down without reducing the market value of properties. To allow financial losses to be passed through, on the other hand, increases the potential value of residential complexes subject to rent regulation since future rent levels are increased. Whether there are better or more feasible ways of dealing with the trade-off between rent levels and the value of rental buildings will engage the attention of the Inquiry in its second phase.

The question for the Inquiry at this time is whether the existing policies and practices concerning the treatment of financial losses resulting from the purchase of a residential complex should be revised. The position taken in this Report is that no recommendations can be made at this time, even though several aspects of the treatment of purchase costs, when considered alone, are open to criticism. Specifically, it has been argued that a purchaser is rewarded for paying a high price for a residential complex by being awarded large rent increases. Whether the result is unreasonably high purchase prices and excessive rent increases is an issue to be addressed in the second phase of the Inquiry. It is evident, nevertheless, that the amounts of financial loss passed through into rent increases result in substantial differences between the rents in buildings that change hands and those that do not. Hence, tenants in different buildings receive very different rent increases owing to circumstances totally beyond their control. The portion of a financial loss that should ideally be covered by rent increases should be calculated in a way that is fair to tenants and puts all landlords on the same footing. Whether financial loss should enter into the determination of rent increases at all is a question that will be addressed by the Inquiry in its second phase. It may be that the only feasible action that can be taken will be to make adjustments to the current practice. But until the whole matter of equity and return on equity has been investigated, it would be premature to tinker with the present system.

9.5.1 The 1982 Interim Act: Section 3

The short title of the Act referred to in this Report as the 1982 Interim Act is the *Residential Complexes Financing Costs Restraint Act, 1982*. The full title is *An Act to provide for an Interim Restraint on the Pass Through of Financing Costs in Respect of Residential Complexes*. The titles describe the purpose of the legislation, which was introduced at the height of the crisis in the residential tenancy market resulting from the purchase and resale of some 11,000 rental units in the Toronto area. (The legislative history of the Act is outlined in the Preface.) Section 3 of the 1982 Interim Act deals with the pass-through of financial loss as follows:

> 3(1) Despite section 131 of the *Residential Tenancies Act*, the Commission, when determining the total rent increase for a residential complex on the application of a landlord under section 126 of that Act, shall, where a financial loss arising out of an increase in financing costs resulting from his purchase of the residential complex, including such a financial loss carried forward from a preceding year, is claimed by the landlord as a part of his claim for a rent increase, allow (as the component of the total increase in rent determined by the Commission that is attributable to such increase in financing costs) not more than 5 per cent of the total of the last lawful rents that were charged for the residential complex.
>
> (2) Where in the opinion of the Commission, a rent increase of less than the maximum of 5 per cent allowed under subsection (1) is justified by reason of allowances for financial loss in respect of the increase in financing costs being phased in over a period of years,

> such lesser amount shall be the amount of rent increase authorized by the Commission in respect of the increase in financing costs.

In a statement to the legislature on December 2, 1982, the Minister of Consumer and Commercial Relations said:

> Today, I am introducing for first reading the *Residential Complexes Financing Costs Restraint Act*, a bill that was born out of the controversy surrounding the much publicized sale and resale of about 11,000 rental units originally owned by the Cadillac Fairview Corporation. In brief, this bill limits to a maximum of 5 per cent that portion of a rent increase attributable to increased financing costs claimed by a landlord as a result of his purchase of a residential complex. As most of the members already know, this is one of the four steps I have taken to deal specifically with the Cadillac Fairview transaction and, in general, with the overall rent review situation at this time . . . .
>
> I feel that this legislation addresses a very difficult and at times confusing situation. I believe that the bill will provide reasonable interim measures until we receive the report of the Thom Commission. It will provide relief for tenants whose rents will be affected by cost increases arising out of a sale of the residential complex.
>
> Equally important, the bill should give a clear signal to those entrepreneurs who wish to speculate in residential tenancies that the tenants will not be made the victims of their schemes.[4]

Greymac-Kilderkin Transactions

It would be more appropriate to refer to the transactions mentioned by the Minister as the Greymac-Kilderkin transactions, and they are so referred to in this Report. Successive sales by Greymac Credit Corporation and Kilderkin Investments Ltd. of some twenty or more residential complexes at large price increases gave rise to the fear that the financial costs involved in these sales would result in large financial losses to the ultimate purchasers and that those losses would have to be recognized and taken into account under the normal rent review process. It was feared that the losses would justify unacceptably large increases for the units in the complexes.

The Inquiry has not been concerned in any way whatever with the Greymac-Kilderkin transactions. The terms of reference in the Order in

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[4] *Legislature of Ontario Debates 2nd Session, 32nd Parliament*. Official Report (Hansard). Hansard No. 160, Vol. 5, p. 5700.

Council constituting the Inquiry called for a study of the current system of rent review in Ontario, and the factual background for that study is provided by the decisions and rulings of the Commission, which has exclusive responsibility for the operation of rent review in the province. To date, however, no aspect of the Greymac-Kilderkin transactions has come under consideration by the Commission. Nor have all the circumstances attending the transactions been revealed. Consequently, no assumptions can be made as to the possible result of applications for rent increases that might be made by the landlords of the complexes involved in those transactions.

It would appear that there were other cases as well as the Greymac-Kilderkin transactions that gave rise to the imposition of the statutory limit on the amount of financial loss resulting from the purchase of a complex that could be passed through annually into rent increases. In his statement quoted above, the Minister speaks of entrepreneurs speculating in residential tenancies, and the Chief Tenancy Commissioner, in his evidence to the Inquiry, said there were a number of very large sales based on the same scheme. Other evidence presented to the Inquiry about sales and purchases of residential complexes and the resulting rent increases provided the Inquiry with an understanding of how such transactions are dealt with by rent review. There seemed to be a common belief that there had been an increase in recent years in the number of sales of residential complexes at what were believed to be excessive prices, with unfortunate consequences for tenants.

Restraints on Pass-Through of Financial Loss

With the enactment of section 3 of the 1982 Interim Act, the direction in the Guide with regard to the pass-through of financial losses was enlarged to include the following paragraphs:

> Where the landlord is claiming, as a component of the total rent increase, a financial loss due to an increase in financing costs resulting from his purchase of the residential complex, including such a financial loss carried forward from a preceding year, the Commission shall allow not more than 5% of the total of the last lawful rents that were charged for the residential complex as the component of the total rent increase which is attributable to the increase in financing costs.
>
> Should the Commission be of the opinion that the financial loss referred to above be phased in over a period of years resulting in less than the maximum 5% allowed, then such lesser amount shall be the component of the total rent increase attributable to the increase in financing costs (p. 9).

The intended effect of section 3 was to reduce the rate at which financial losses resulting from the purchase of a complex would be passed through into rent increases. The section does not, however, reduce the total amount of the financial loss, all of which will eventually be passed through.[5] Experience has shown that section 3 has succeeded in restraining the pass-through of large financial losses, which in some cases at least may have resulted from excessive purchase prices paid for the complexes.

The Commission keeps records of whole building review hearings, which permit a comparison between the effect of the Guideline restraint and the statutory restraint on the pass-through of financial loss. During the five months from April to August 1983, the Commissioners filed Whole Building Hearing Reports (the Reports) on 1,425 hearings they had held, of which 1,374 dealt with cases to which the 1982 Interim Act applied. In 648 of those cases, the landlord was allowed a financial loss, a part of which was passed through into rent increases. In 150 of those cases at most, the loss was sufficiently large that the amount the landlord was allowed to pass into the rent increases under section 3 of the Act was less than the amount that could have been passed through if the only restraint had been the Guideline five-year limitation.

The figures that can be drawn from the Reports cannot be accepted as completely accurate, and the period they cover is relatively short. Nevertheless, they give an indication of the frequency with which section 3 of the 1982 Interim Act might come into play and they permit some general observations. By going farther than the Guideline in a number of cases, section 3 has modified the impact of financial losses on rent increases. As a method of protecting tenants against large rent increases resulting from large financial losses, the legislative approach is to be preferred since the system of rent regulation,as it was designed and as it functioned before section 3 of the 1982 Interim Act was introduced, left a way open for rent increases that the legislature considered unacceptable.

***Recommendation 42.* Section 3 of the *Residential Complexes Financing Costs Restraint Act* should be kept in force.**

The Reports also reveal that in the majority of cases the amount of the financial loss permitted under the Guideline as an addition to the rent increase for the year was less than 5 per cent of the rents. Under subsection 3(2) of the 1982 Interim Act, the amount of financial loss that may be passed through into rent increases is concurrently subject to the Guideline. A question that should receive further consideration is whether, in all cases, financial loss might be passed through in annual increments of an amount up to 5 per cent of the rents and whether the Guideline restraint should be removed entirely. It may be noted that Interpretation Guideline No. RR-4, as it now reads, contains a provision whereby the whole amount of the financial loss resulting from the purchase of a complex may be passed through into rents in one year if the loss is relatively small—the example given is 5 per cent of gross revenue. This question was not addressed during the first phase of the Inquiry and is not the subject of a recommendation in this Report.

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[5] To the extent that the slowdown in the pass-through of financial loss has reduced the resale value of residential complexes, the resulting financing costs, financial loss, and therefore rent increases would be reduced.

9.6 Relief of Hardship

9.6.1 The 1979 Act

The provision for relief of hardship found in subsection 131(3) of the 1979 Act was a new feature of rent review:

> 131.-(3) When the total rent increase for the residential complex has been determined under subsection (1), if the resulting gross revenue does not exceed the costs found under clause (1)(*a*) by at least 2 per cent, the Commission may, where it considers it necessary to relieve the landlord from hardship, allow the landlord the additional revenue required to raise the gross revenue to not more than 2 per cent above the cost found.

Rent Review Guideline No. RR-5 states that " . . . it would appear to be in order to consider that a landlord has suffered a hardship, where he . . . has failed to derive some profit from his operation of the building." A review of the reasons for decisions by Commissioners in rent review hearings that were brought forward for consideration during the Inquiry shows that the practice of the Commissioners is to grant the allowance as a matter of course when it is seen that the landlord will not recover 102 per cent of his increased costs (where there is no financial loss) from his projected increased rents.

This practice came under review by the Divisional Court in re Tatsis and Barbara Apartments Limited, 132 DLR (3d)53. In the judgement in that case, the court quoted from the reasons given by the appeal panel of the Commission when it allowed the landlord the additional revenue to raise gross revenue to 2 per cent above the costs found. The quotation from the reasons was as follows:

> The intent of Section 131(3) of the Act is to permit the Landlord's

> revenue to increase to a level of 2% above the cost found under Clause "a" of Section 131(3) and while the allowance for the required additional revenue is discretionary on the part of the Commission, it is our opinion that only under unusual circumstances should it be denied.

This opinion of the Commission was challenged by the tenants. The Divisional Court did not reply to the tenants' position in its own words, but it did confirm the appeal panel's allowance.

A hardship allowance is also usually permitted if the landlord has suffered a financial loss that is not the result of the purchase of the premises. The amount of the allowance in such a case would simply be 2 per cent of the projected total revenue, since the financial loss allowance would have been sufficient to raise the landlord to a break-even position.

Rent Review Guideline No. RR-4 says that hardship may reasonably be borne by the landlord if he is in the process of passing a financial loss caused by the purchase of the premises into the rents. The Guideline reads:

> Where a financial loss exists and only a portion of that loss will be eliminated in the forthcoming year, the application of Section 131(3) would appear to be inappropriate. The Commissioner would already have decided, at this point, not to permit the elimination of the total loss within the year under review. If the continuation of a portion of the loss is a hardship that may be reasonably borne by the landlord, the use of Section 131(3) would be inconsistent.

An explanation for the rule was given by an official of the Commission who gave evidence to the Inquiry:

> The reasoning is that when the Commissioner is determining what part of financial loss is to be allowed, he is very well aware that by not allowing the full financial loss, there is a hardship on the landlords; he is aware of that, but knowing everything, he is consciously making a decision that only 50 per cent or 40 per cent of that financial loss is to be allowed . . . . then to go and say, but I will allow another two per cent under that relief of hardship, it makes no sense.
> (Transcript, July 26, 1983, p. 24)

9.6.2 The 1982 Interim Act: Section 4

A further measure of protection to tenants against the impact of the pass-through of financial loss resulting from the purchase of a residential complex was accorded by section 4 of the 1982 Interim Act.

> 4. The operation of subsection 131(3) of the *Residential Tenancies Act* is suspended whenever a part of the rent increase that is to be determined is attributable to increases in financing costs resulting from any purchase of a residential complex.

It is understood that before section 4 was enacted, the Commission normally granted hardship relief in the year in which the last instalment of the financial loss was passed through into a rent increase, that is, the year in which the landlord would reach a break-even position. Under Interpretation Guideline No. RR-4, as revised in November 1982, the final instalment of a financial loss would not be included in the rent increase until the fifth year following the purchase of the property (the last year of the pass-through of the financial loss). However, with section 3 of the 1982 Interim Act in force, it might not be until the sixth or even a later year (if the Guideline is followed) that the last of the financial loss would be included in the rent increases. Under section 4 of the Interim Act, consideration cannot be given to granting a hardship allowance until after the pass through has been completed.

At present there are probably no cases before the Commission in which a Commissioner could even consider granting hardship relief under subsection 131(3). The reason is that, as a result of the change in Interpretation Guideline No. RR-4 from three to five years for the pass-through of a financial loss, a landlord will not complete a loss pass-through until at least two years after the change in the Guideline.

It appears therefore that until 1986 section 4 of the 1982 Interim Act will have no significance in the rent review process. If it is desirable to change the Commission's current practice of granting hardship relief in the final year of a financial loss pass-through, the section can be continued in force to be applied when called for by the particular case. The same result could be achieved by an amendment to Interpretation Guideline No. RR-5, negating hardship relief in a year in which any part of a financial loss was passed through to the tenants. That would seem to be simpler and more appropriate. It would also leave the timing of the relief of hardship to the discretion of the Commissioner, who would take the merits of specific cases into consideration.

***Recommendation* 43. Section 4 of the *Residential Complexes Financing Costs Restraint Act* should be allowed to expire.**

9.7 Maintenance and Repair

Paragraph 131(1)(*c*) of the 1979 Act directs that one of the matters to be considered by the Commission in determining a total rent increase is whether there has been " . . . an improvement or deterioration in the standard of maintenance and repair of the residential complex or any rental unit located therein."

A reason for including clause (*c*) in the 1979 Act is found in the "Report of the Standing General Government Committee" of the legislature, which was tabled in the legislature in June 1978. The Committee had studied a report prepared by the Ministry of Consumer and Commercial Relations "on the Policy Options for continuing tenant protection" and had given consideration among other matters to "the implications of rent controls" and the "rights and obligations between landlord and tenant" (Committee report, p. 1). The Committee recommended that a tribunal should be established to deal with applications for review of rent increases and that in reviewing proposed rent increases the tribunal should consider a number of criteria, including "the standard of maintenance in the unit and building" (p. 4). The legislature adopted the latter recommendation by including clause (*c*) in subsection 131(1) of the 1979 Act. The interpretation and application of that paragraph have caused a number of problems.[6]

The state of maintenance and repair of a residential complex is frequently a matter of concern to the tenants, but a broad interpretation of clause (*c*) is not a satisfactory way of addressing the matter. Tenants may have grounds for complaint regarding the quality and condition of the complex in which they live, and as matters now stand a rent review hearing is the only time they can be assured of meeting their landlord, or at least his representative, face to face to air their complaints with some confidence that they will be listened to. The scheme of rent regulation in Ontario is not, however, designed for the general purpose of bringing landlords and tenants together.

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[6] In Rent Review Guideline No. RR-7, the Commission interprets paragraph 131(1)(*c*) of the 1979 Act very broadly. The Guideline reads:

> If a landlord does not maintain a service, either by substantially reducing it or eliminating it completely, a deterioration in the standard of maintenance has occurred. This deterioration should be reflected in any rent increase determination. For example, if a landlord ceases to operate a previously operating swimming pool, it would be in order to reduce the total rent increase justified by an amount equal to the costs of operating and maintaining the swimming pool for the period under review. (p. 1)

It would seem clear that closing a swimming pool or a recreation facility or withdrawing security protection cannot be regarded as a change in a standard of maintenance and repair. In effect, the Guideline "creatively" legislates clauses 11(*a*) and 11(*d*) of the 1975 Act, long since defunct, and clause 28(1)(*c*) of the 1979 Act, never declared in force, into operation.

After all, a landlord can impose a 6 per cent increase without meeting his tenants at all. If it is desirable that the tenants of a complex should be able as a body to discuss problems of maintenance and repair with their landlord, the means for so doing should be available to all tenants and not just those whose landlord has gone to rent review.

Subsection 96(1) of the *Landlord and Tenant Act* provides that "the . . . landlord is responsible for providing and maintaining the rented premises in a good state of repair and fit for habitation". Section 28 of the 1979 Act would have superseded section 96 of the *Landlord and Tenant Act* but has not been declared in force. Section 28 extended the landlord's responsibility for maintenance and repair to include the residential complex itself as well as the services and facilities provided by him. Under subsection 96(1) of the *Landlord and Tenant Act* the power to enforce the obligation imposed on a landlord was conferred on the courts, but under section 28 of the 1979 Act the Commission was empowered to make an appropriate order if the landlord failed to comply with or breached an obligation under that section. The inference is that under the 1979 Act as passed by the legislature, rent review under Part XI of that Act is concerned with the landlord's costs and entitlement to rent increases while his obligations as a landlord would be dealt with under Part III. This Report does not recommend that it should be an ancillary function of the rent review process to provide a forum for discussing the maintenance and repair of the complex. Other opportunities are or could be made available for that purpose.

A further reason why paragraph 131(1)(*c*) is not satisfactory is that a change in the standard of maintenance and repair cannot be translated into a dollar amount that can be added to or subtracted from the landlord's rents as a cost pass-through. In fact, an examination of reasons for Commissioners' decisions in rent review applications shows that the Commissioners have had considerable difficulty applying the clause. A finding can be made that there has been an improvement or, more usually, a deterioration in the state of maintenance and repair of the complex, but there has been no uniformity in the method of deciding what amount should be added or subtracted in the calculation of the total rent increase.

Rent Review Guideline No. RR-7, entitled "Standard of Maintenance and Repair", offers no advice on how a deterioration in the standard of maintenance and repair of a complex can be quantified. It considers the matter of quantifying a finding under paragraph 131(1)(*c*) only from the viewpoint of a rent increase that might be granted in order that the landlord could improve the standard of maintenance. The amount of the increase would be "an amount sufficient to permit the landlord to carry out the higher standard of maintenance." But no directions are given as to how to determine the amount.

Where there has been a deterioration, the Commissioners' practice is to impose an arbitrary reduction in the cost increases claimed by the landlord for maintenance and repair costs for the Projected Year. In effect, they impose a fine or penalty. This practice permits landlords to assert that rents that were too low to cover the costs of proper maintenance and repairs in the past will be even less adequate in the future. The tenants may enjoy a reduced rent increase, but the physical condition of the premises will not improve. The reduction in a claimed increase, then, can be counter-productive.

Another unresolved problem in clause 131(1)(*c*) is the meaning of the standard referred to. The concept of a standard came from the legislative committee's report (referred to earlier in this chapter), which itself did not define the term. One approach is to assume that the legislature meant some objective standard. To arrive at a standard, one suggestion was that all the apartment buildings in the province would be surveyed and categorized by type, size, location, and quality so that objective standards could be ascertained and applied to each category. The magnitude of such an operation would be horrendous, and even if it were possible the opportunities for dispute would be endless.

An alternative interpretation of the legislation is that the standard is peculiar to the complex. If the premises are kept in meticulous condition, that would be the standard for that complex; if maintenance and repairs are neglected and the building is run down, that would be the standard for the complex. This approach is not acceptable to the tenants, and in any case, it only partially answers the question. Since standards tend to change with time, there would be a problem in establishing the reference point from which to attempt to measure an improvement or deterioration.

The Guideline offers no assistance, but a policy can be found in the decisions of the Commissioners. It is that the improvement or deterioration has to be established as having occurred during Year 2 or at the most from Year 1 to Year 2. This policy was criticized by the tenants. As one witness said:

> At the hearing . . . the tenants are asked to go back to the beginning of the actual year [Year 2] and show the Commission that deterioration has taken place from that time up until approximately the time that application is made.
>
> The difficulty is that the tenants aren't even aware that the application was going to be made until the end of that actual period and then they're being asked to provide evidence of deterioration during the previous year and they've got no objective method to be able

> to show what the maintenance was like at the beginning of the actual year . . . . (Transcript, March 14, 1984, p. 73)

The criticism is well taken, but it is hard to see what else the Commissioners could do, given that they are under a statutory direction to make a finding if the issue is raised.

The policy concerning deterioration in maintenance and repair and the discontinuance of a service should revert to the policy of the 1975 Act, namely,that the rent should be lowered if a service was discontinued.[7] (That policy is found in section 11 of the 1975 Act, which was referred to earlier in this chapter). It is evident from the experience with clause 131(1)(*c*) that it is not feasible to devise a negative cost increase, as was contemplated by that provision. One can reasonably assume, however, that a deterioration in maintenance and repair usually reflects a reduction in the amounts spent on those items. Certainly the discontinuance of a service would result in a reduction of expenditure, the amount of which can be ascertained by examining Year 2 and Year 1 costs.[8] The reduction in monthly expenditure resulting from a reduction in maintenance and repairs or the discontinuance of a service will result in reduced operating costs which will lower the rent increase. Furthermore, if the base year review as recommended in Chapter 11 is adopted, reductions in expenditures on maintenance in Year 2 or earlier will be taken into account for any building that has already been to rent review at least once.

***Recommendation 44.* Clause 131(1)(*c*) of the *Residential Tenancies Act* should be repealed.**

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7. Clause 11(*d*) of the 1975 Act empowered a Rent Review Officer to order a reduction in the rent to be paid by the tenant if he found under clause 11(*a*) that:

   11.(*a*) the discontinuance of a service, privilege, accommodation or thing by the landlord has resulted in a reduction in a tenant's use and enjoyment of residential premises and constitutes an increase in rent.

8. See Recommendation 24 concerning the requirement that Year 1 costs be shown on the Cost Revenue Statement.

Chapter 10

Apportionment of Total Rent Increase

Under a system of rent regulation that determines a total rent increase for a whole building, the final step in setting rents is to apportion the total rent increase among the rental units in the complex. It may be assumed that the drafters of the 1979 Act recognized that the method of apportionment would be a problem. Their solution was to leave the matter in the hands of the Commission, subject to the statutory directions, which implied that the landlord would take the initiative by preparing a schedule of the rents he proposed to charge for the units in the complex.

The statutory provisions are subsection 131(4) and clause 131(5)(*a*) of the 1979 Act:

> 131(4) In apportioning the total rent increase determined under subsections (1) and (3) amongst the rental units in the residential complex, the Commission may take into account the following matters:
>
> 1. The rent schedule proposed by the landlord in his application.
> 2. Variations, and the reasons therefor, in the rents being charged by the landlord for similar rental units within the residential complex.
> 3. Rents and variations in the rents being charged by other landlords for similar rental units situate in similar residential complexes within the same geographical vicinity.
>
> (5) Where the Commission has determined and apportioned the total rent increase under this section,
>
> (*a*) the Commission shall make an order setting the maximum

> rent that may be charged for each rental unit that is under review and the date the rents may take effect.

There is much to commend that course of action. Residential complexes that are subject to rent control are the property of private landlords, and the management of property is their business. Setting rents is an important part of management, and it is desirable that as much discretion as possible be left with the landlords, even though the final word may be said by the Commission.

When the landlord is apportioning a total increase, there may be similar units that are paying different rents whereas the landlord may prefer to charge the same or similar rents for similar units. Although, strictly speaking, no two units can be identical, a number of units can be sufficiently alike to command much the same rents. For various reasons, however, differences in rents, sometimes quite substantial, may have developed. If the allowed increase must be apportioned on an equal percentage basis to all units, the differences will be maintained, even if the cause of the variation no longer exists. For instance, a long-term lease may have prevented or limited annual rent increases for one unit for a period of time while another similar unit was not so affected. Or it may have been necessary to lower the rent on some occasion to fill a vacancy or to accommodate a tenant.

When rent regulation was established in 1975, the rents then being paid were used as the base for future controlled increases. Consequently, variations in rents among similar units were, in effect, confirmed since the landlords had little flexibility for correcting the discrepancies. This was particularly so if the landlord's policy under rent regulation was not to raise the rents by more than the statutory increase. Then the only way that he could reduce a discrepancy between the rents of similar units was by not raising the rent of the unit with the higher rent to the full extent permitted. In actual practice, under the inflationary conditions that have prevailed since 1975, it is probable that landlords who did not go to rent review raised all the rents in their buildings by the amount of the statutory increase whenever they could, thereby accentuating the existing differences. At the same time, the causes of the variations, other than actual physical differences, in all likelihood no longer exist.

However, if the landlord applied for a whole building rent review, a different situation prevailed, allowing him to conform the rents of similar units. Rather than apply the rent increase to each unit, as was done when recourse was had to the statutory increase, the landlord was permitted a total rent increase for the whole complex, which he could in the first instance apportion among the units at his discretion. In recent years, the average increase permitted by the Commission has been over 14 per cent (see

TABLE 3: **Whole Building Reviews, 1979-80 to 1982-83**

	1979-80	1980-81	1981-82	1982-83
Total number of hearings	609	1,404	2,751	4,202
Total number of units	19,469	42,377	82,651	127,812
Average total monthly increase requested per unit:				
Amount	$33.75	$39.55	$54.04	$62.77
Percentage	14.32%	15.72%	19.34%	20.94%
Average total monthly increase granted per unit:				
Amount	$25.66	$29.60	$41.16	$42.45
Percentage	10.74%	11.55%	14.73%	14.19%

SOURCE: Residential Tenancy Commission, *Report to the Minister:* 1979-80, p. 19, Table 1; 1980-81, p. 20, Table 1; 1981-82, p. 23, Table 1; 1982-83, p. 26, Table 1.

NOTE: The reporting year of the Residential Tenancy Commission runs from April 1 to March 31.

Table 3). Many increases have been much higher, and a few have exceeded 50 per cent (see Table 4). When total increases are that high, there is considerable scope for adjusting the rents among the units.

When landlords reduce the differences between rents, the practice is known as equalization. Although this is not a statutory word and may be misleading, it is in general use and describes an objective pursued by some landlords in preparing rent schedules for their complexes. It is understood to be a common practice, but there are no statistics to indicate how often it is followed or to what extent equalization is achieved among similar units. Equalization is an understandable business goal and takes the form of increasing the rents of units at the lower end of a rent bracket more than those at the upper end of the bracket.

The principle of equalization was not objected to by tenants' advocates.[1] A submission made on behalf of a major group of tenant organizations in Toronto said:[2]

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1. Some witnesses who represent tenants at rent review hearings were unwilling to take a position on equalization because of diversity of opinion among their clients.

2. "Issues to be raised at Commission of Inquiry into Residential Tenancies" on behalf of the Federation of Metropolitan Toronto Tenants' Associations and a number of community legal service organizations, February 4, 1983, p. 8.

TABLE 4: Percentage Increases Granted for all Residential Complexes as a Result of Hearings, 1979-80 to 1982-83

	6% and less	6-10%	10-12%	12-14%	14-16%	16-20%	20-25%	Over 25%[a]	Total
1979-80									
Number	42	167	102	79	52	59	44	68	613
Percentage	6.8	27.3	16.6	12.9	8.5	9.6	7.2	11.1	
Cumulative percentage	6.8	34.1	50.7	63.6	72.1	81.7	88.9	100	
1980-81									
Number	92	356	201	159	128	169	119	214	1438
Percentage	6.4	24.7	13.9	11.1	8.9	11.8	8.3	14.9	
Cumulative percentage	6.4	31.1	45.0	56.1	65.0	76.8	85.1	100	

	6% and less	6-10%	10-12%	12-14%	14-16%	16-20%	20-25%	25-30%	30-35%	35-40%	40-50%	Over 50%	Total
1981-82													
Number	58	433	352	283	289	426	313	206	134	88	80	89	2751
Percentage	2.1	15.7	12.8	10.3	10.5	15.5	11.4	7.5	4.9	3.1	2.9	3.2	
Cumulative percentage	2.1	17.8	30.6	40.9	51.4	66.9	78.3	85.8	90.7	93.8	96.7	100	
1982-83													
Number	94	656	484	422	431	643	571	335	202	140	124	100	4202
Percentage	2.2	15.6	11.5	10.1	10.3	15.3	13.6	8.0	4.8	3.3	2.9	2.4	
Cumulative percentage	2.2	17.8	29.3	39.4	49.7	65.0	78.6	86.6	91.4	94.7	97.6	100	

[a] Since relatively few increases of this size were granted in 1979-80 and 1980-81, further percentage breakdowns are not available.

SOURCE: Residential Tenancy Commission, *Report to the Minister:* 1979-80, p. 27, Table 6; 1980-81, p. 30, Table 6; 1981-82, p. 33, Table 6; 1982-83, p. 36, Table 6.

> The payment of equal rents for similar accommodation in the same residential complex is a desirable and necessary policy. However, the *current* method for implementation of this principle is inequitable (p. 8).

The alleged inequities were described in the following terms:

> First, rents tend to be equalized up to the highest rent that is charged for any one of a group of like units, without inquiry into why that unit bears a rent that is higher than others. In many instances, the highest rent may be the result of illegal rent increases. Secondly, equalization often results in substantial increases for the units with the lowest rents and, thus, has serious consequences for the security of tenure of the tenants of those units. (Ibid., p. 7)

No evidence was presented to the Inquiry to support the remark that the highest rents may be the result of illegal increases, but it was argued strongly that there should be no equalization whatever until the landlord proves the legality of his base rents. This matter pertains to the determination of the base rents, which is the subject of Chapter 5, and is not relevant to the issue of rent equalization.

As for the argument that, as a result of equalization, some tenants may have to move, it is not self-evident that the tenants paying the lowest rents and thus exposed to the larger increases on apportionment of the total increase are the least able to pay. Although increases in rent may have serious consequences for many tenants, the tenant's ability to pay may have little to do with why similar units rent for different amounts.

The general tenor of the evidence regarding the apportionment of total rent increases was that, although equalization was in theory not objectionable, it was undesirable that excessively large increases should be charged to particular units in one year.

Evidence was presented of an ordered total rent increase of 14 per cent and a rent increase for an individual unit in the complex of 50 per cent. Since unit-by-unit analysis of the rent increases in this case was not put in evidence, one cannot know what the increases were among similar units. Nor was evidence presented as to why the unit that was ordered to pay a 50 per cent increase was being charged a lower rent than other similar units or what the increases were for similar units at the upper end of that rent bracket.

The action taken by the legislature to remedy what was considered to be a flaw in the operation of rent review was to enact section 5 of the 1982 Interim Act:

> 5. The operation of subsection 131(4) of the *Residential Tenancies Act* is suspended in respect of any application made to the Commission under section 126 of that Act where the hearing in respect of the application is commenced on or after the day this Act comes into force and despite the amount of the increase set out in a notice given under section 60 of the *Residential Tenancies Act* or under section 129 of the *Landlord and Tenant Act*,
>
> (*a*) the Commission shall apportion the total rent increase determined under subsections 131(1) and (3) of the *Residential Tenancies Act* equally amongst the rental units in the residential complex, on a percentage basis; and
>
> (*b*) the landlord may increase the rent charged for each rental unit in the residential complex by an amount not exceeding the amount set out in the Commission's order.

An argument that may have persuaded the government to propose section 5 of the 1982 Interim Act is that some tenants may have low rents because they went to rent review before whole building review was introduced by the 1979 Act and obtained a reduction in the increase requested for their unit. Equalization would eliminate the benefit achieved at that time. No evidence was submitted to the Inquiry on the merits of this argument. Nevertheless, since the impact of equalization is on tenants whose rents are at the lower end of a rent bracket for similar units, it may be inferred that the tenants who made the argument were enjoying a benefit that other tenants occupying similar units did not share.

Under unit-by-unit rent review, which prevailed up to 1979, the victory obtained by tenants who disputed rent increases was at the expense of the landlord. With the introduction of whole building rent review, the situation changed. Although the tenants present a common front to the landlord with respect to the total rent increase, when it comes to apportioning the increase, what benefits some tenants prejudices others. The real question with apportionment might be to what extent the landlord should be permitted to impose his discretionary allocation of the rent increase on the tenants and whether some generally acceptable method of apportionment can be devised.

In light of the evidence presented to the Inquiry, it would be rather surprising if section 5 of the 1982 Interim Act was drafted for the specific purpose of revoking the principle that similar rents should be paid for similar accommodation. Section 5 may have been designed to deal only with the problem of excessive rent increases for some units. Whatever the section may do in that regard, it operates in direct opposition to the concept of similar rents for similar accommodation. Under equal percentage apportionment, the unit charged the higher rent suffers the greater dollar increase in rent.

The lower dollar increase charged the unit with the lower rent not only perpetuates but accentuates the spread between the high and low rents for similar units. The 1982 Interim Act is quite automatic and allows no scope for the discretion by the landlord or the Commission that was possible under the former apportionment practice.

The alternative to equal percentage apportionment is to return, with some modification, to the practice that prevailed before the 1982 Interim Act and adopt a formula that combines equalization with restraints on excessive increases in rent. Before equal percentage apportionment, the Interpretation Guidelines were of very little assistance to the Commissioners in their task of apportioning total rent increases. The relevant Interpretation Guideline is No.RR-6, entitled "Apportioning the Total Rent Increase", which repeats the injunction in item 1 of subsection 131(4) of the 1979 Act. The Guideline reads:

> . . . the Commission should . . . consider the proposed relative distribution of rentals between units, as determined from the [landlord's] schedule. (p. 1)

The only other guidance offered to the Commissioner is the comment in Guideline No. RR-6:

> Where there is some concern that the differential in rentals between different types of residential units is inappropriate, consideration should be given to comparable rentals and variations in rents being charged for similar accommodation in [the] vicinity. (p. 2)

That merely re-iterates item 3 in subsection 131(4) of the 1979 Interim Act. The difficulty of obtaining information about rents for similar accommodation in the vicinity and comparing them with the rent proposed for the unit under consideration would make the advice of little practical use. It was stated in evidence that the Commissioners never refer to item 3.

Nothing is said in Interpretation Guideline No. RR-6 about item 2 in subsection 131(4) of the 1979 Act. However, decisions by Commissioners on rent review applications reveal instances in which individual tenants questioned the rent increase proposed for their units by a landlord. No general principles can be drawn from the Commissioners' remarks in those cases. In every case that has come to the attention of the Inquiry, the objection was based on some physical deficiency or lack of quality in the unit. In no decision was there a discussion of what other reasons there might be for variations in rents. Whatever other reasons there may be, this Report takes the position, based on a reading of the Act, that the legislature did not intend that the ability of a tenant to pay a rent increase should be considered by the Commission when apportioning a total rent increase. Nor was a suggestion made to the Inquiry that this should be done.

The Federation of Metropolitan Toronto Tenants' Associations touched on the point in the submission referred to earlier, which proposed that increases based on equalization should be phased in over a period of years, "giving consideration to the hardship that will be suffered by any of the tenants" (p. 8). It would be a financial shock and, in that sense, a hardship to any tenant to be charged a 50 per cent rent increase in one year, as happened in the case mentioned earlier in this section. For some tenants, however, it could be a real economic hardship: they would not be able to pay the increased rent and would have to move. Nevertheless, this Report does not recommend that ability to pay be introduced into the calculation of the apportionment of a total rent increase.

There are several reasons for that position. First, the Commissioners are not trained to inquire into the economic status of tenants and the related social and domestic matters. Should they try to do so, it would be resented by many tenants and would be very time-consuming. Moreover, the apportionment of a total rent increase is a zero sum operation, because what is not paid by one tenant must be paid by another. Consequently, the ability of any one tenant to pay an increased rent cannot be considered apart from the ability of other tenants in the same complex to pay their shares of the increase. Even if it were possible to investigate and compare the economic position of all the tenants, even in a small complex, the time required would negate the goal of completing the rent review process as quickly as possible.

That is not to say that apportionment should be governed by the principle of equalization without regard to other considerations. From the evidence presented to the Inquiry, it was apparent that there were instances of such wide variations in the rents of similar units that equalization resulted in disproportionate rent increases for some units. These increases could be said to shock people's sense of what was proper, and it was recognized there should be some limit. The difficulty is to define and establish the limit.

The proposals advanced by advocates of tenants' interests were that the limit should be an arbitrary dollar amount or percentage of the rent, set by legislation or regulation and applied in all cases. This approach is attractive to tenants because it reduces the element of discretion in the equalization process. The apportionment of a rent increase is a potential cause of dispute among tenants and, to the extent that it can be dealt with by fixed rules, the possibility of dispute is lessened. The problem is to set the limit that will afford the desired relief for the particular tenants who are paying low rents and facing large increases and, at the same time, ensure that the landlord will be able to increase the rents in the complex to the total amount permitted by the Commission.

The specific proposal was that the increased rent charged for a unit occupied by an existing tenant should not exceed 125 per cent of the average increased rent of the units in the complex. By implication the rent that could be charged for a unit that would be occupied by a new tenant could be raised to the market level. No examples of the application of the formula were produced, but the proponents acknowledge that in some cases the landlord would not be able to raise the rents in the complex to an aggregate amount equal to the total rent increase permitted by the Commission. The deficiency would be treated as a cost that could be passed through to the tenants in the following year. A variation on that proposal was that the amount would be calculated and apportioned as a surcharge on the rents for the year in which the increases took effect.

Another apportionment formula was presented by an official of the Commission. The landlord would propose a rent schedule in which the rents of the units were equalized, either completely or to whatever extent he saw fit. If the total of the proposed rents exceeded the total of the existing rents plus the total rent increase permitted by the Commission, each of the proposed rents would be reduced by the application of an adjustment factor. The adjustment factor would be the ratio of the permitted total rents to the proposed total rents. This formula would permit the landlord to increase rents to the maximum permitted total amount, but it would not provide relief from an undue rent increase to a tenant who was paying an exceptionally low rent.

Although other formulas could no doubt be devised, it is not certain that a formula is the most satisfactory way of apportioning a total rent increase. In the first place, no formula is acceptable unless, during the rent increase year, it provides for unit rent increases equalling the total permitted increase. The ordered rent increase is an amount to which the landlord is entitled pursuant to the 1979 Act. The landlord's potential to recover that amount should not be prejudiced by the application of a rent-setting formula that affords relief to some tenants only. On the other hand, the equalization of rents is not a right that a landlord should be allowed to assert without regard to its effect on the tenants. To a degree the landlord (in some instances along with his predecessors) is responsible for the disparities in rents and should not expect the situation to be corrected abruptly without regard to the consequences for the tenants. There is a more general objection to the use of a formula for rent apportionment: if it is mandatory, it will be applied to a wide range of situations and there can be no assurance that the result will be fair in every case. It is suggested in this Report that the inherent discretion of the Commission under section 131(5) of the 1979 Act should be emphasized by appropriate language in an Interpretation Guideline. The

Guideline should, however, direct the Commissioner to impose a cap on any increase that he regards as excessive.

Recommendation 45. **Section 5 of the 1982 Interim Act should be allowed to expire.**

Recommendation 46. **The differences due to equalization among rent increases for different units should be limited to some dollar amount or percentage of the rent as may be specified by the Commission.**

Chapter 11

The Concept of Cost Pass-Through

If a system of rent regulation ensures that the increase in the annual rental income from a residential complex exactly matches the increases in the landlord's annual costs, the system could be called an "ideal" cost-pass-through system.[1] The effect of an ideal system would be to "lock in" each landlord to the net rental income (gross rental income minus costs) that he realized in the year before the system came into force. So, for example, a landlord who realized a net income of $100,000 on a particular building in 1975 would also realize a net income of $100,000 in 1984.

Ontario's system of rent regulation is often described as a cost-pass-through system, and it was said during the first-phase hearings of the Inquiry that as a consequence, landlords have been locked into their pre-rent-review net income levels.[2] Furthermore, it was pointed out that the buying power of this fixed net income has been significantly eroded by inflation over the past nine years.

In practice, however, Ontario's system of rent regulation differs from an ideal cost-pass-through system in several important ways, and it is wrong to assume that landlords' net incomes have been fixed in dollar terms since 1975. First, since 1979 only the whole building review process has applied the cost- pass-through principle and not all rent increases are set by whole building reviews. For landlords who do not apply for whole building review, net income will usually change. Second, the costs recognized for purposes of whole building review differ from both accounting costs and economic costs. Even if the costs recognized for whole building review purposes were passed through in such a way that net income as recognized by whole building review was held constant, neither accounting profit nor economic profit, which are of primary interest to landlords, would be fixed. Third, the increases in rental income justified by cost increases do not occur at exactly the same time as the increased costs; hence, net income within any accounting period, even as recognized for purposes of rent review, varies from year to year.

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[1] The term ideal cost-pass-through system is not meant to imply that it is the ideal system for regulating rents.

[2] Net income is defined as gross revenue minus total allowed costs as recognized for rent review purposes.

This chapter examines the first and third differences between rent regulation under the 1979 Act and an ideal cost-pass-through system. The implications of permitting the statutory increase rather than requiring a whole building review for the residential complex every year are examined in section 11.1. Section 11.2 considers how rent correction hearings can increase the effectiveness of the recommendations in section 11.1 for minimizing the imperfection in the pass-through of costs. The implications of the third difference, the mismatch of the timing of revenue and cost increases, are examined in section 11.3.

The second difference, which is the difference between costs recognized for whole building review and other definitions of cost, has been discussed in previous sections of the Report.

11.1 Base Year Review

Landlords who wish to raise their rents have the option of either raising them by the statutory increase or of applying for a whole building review to justify a larger increase. In fact, landlords who apply for whole building review are the exception: fewer than 15 per cent of all rental units in Ontario are reviewed in any year. When a landlord takes the statutory increase, the increase in his rental income is not necessarily the same as the increase in his costs. Furthermore, since whole building review is restricted to a two-year time frame, even if a landlord does periodically apply for whole building review, any differences between the ideal cost pass-through and the actual effect of using the statutory increase in other years is not corrected.

Tables 5 and 6 illustrate the simplest situations in which the use of the statutory increase allows the landlord's revenue to rise by an amount different from his overall cost increase. In Table 5, where costs rise by only 4 per cent a year while the landlord raises the rents by the statutory increase of 6 per cent, net income rises from $10,000 (8.1 per cent of revenue) in 1983 to $33,806 (20.4 per cent of revenue) in 1990. In Table 6, where costs increase by 8 per cent a year and the landlord raises the rents by the statutory increase of 6 per cent rather than applying for whole building review, net income declines from $10,000 (9.1 per cent of revenue) in 1983 to a negative net income of $5,983 (3.4 per cent below total revenue).

TABLE 5: Net Income with Costs Increasing at 4 per cent a Year

Year	Revenue with 6% Increases	Increase in Revenue	Total Costs	Increase in Costs	Net Income
1983	$110,000	0	$100,000	0	$10,000
1984	116,600	$6,600	104,000	$4,000	12,600
1985	123,596	6,996	108,160	4,160	15,436
1986	131,012	7,416	112,486	4,326	18,526
1987	138,872	7,860	116,986	4,500	21,886
1988	147,205	8,333	121,665	4,679	25,540
1989	156,037	8,832	126,532	4,867	29,505
1990	165,399	9,362	131,593	5,061	33,806

It may be assumed that, in general, landlords apply for whole building review when they anticipate that their costs will increase by more than the statutory increase, but take the statutory increase when it exceeds the anticipated increases in costs. Some landlords, however, do not apply for whole building review, even when the statutory increase is too low to cover the increase in costs, either because they underestimate the cost increase or because they are unwilling, or think they are unable, to cope with the requirements of the whole building review process. The more onerous the administrative requirements of whole building review, the more landlords will be discouraged from seeking an increase greater than the statutory increase even though it might be justified by a rise in costs. Small landlords in particular may find the cost of whole building rent review too high in relation to the increase in income that they are seeking.

TABLE 6: Net Income with Costs Increasing at 8 per cent a Year

Year	Revenue with 6% Increases	Revenue Increase	Total Cost	Cost Increase	Net Income
1983	$110,000	0	$100,000	0	$10,000
1984	116,600	$6,600	108,000	8,000	8,600
1985	123,596	6,996	116,640	8,640	6,956
1986	131,012	7,416	125,971	9,331	5,041
1987	138,872	7,860	136,049	10,078	2,823
1988	147,205	8,333	146,933	10,884	272
1989	156,037	8,832	158,687	11,754	(2,650)
1990	165,399	9,362	171,382	12,695	(5,983)

The effect of the landlord's freedom to choose between the statutory increase and whole building review is illustrated in Table 7. In this extreme

TABLE 7: Landlord with Cyclical Costs

Year	Costs	Increase In Costs	Statutory Increase	Increase Taken	Revenue	Income
1983	$100,000	–	–	–	$110,000	$10,000
1984	110,000	$10,000	$6,600	$10,000	120,000	10,000
1985	110,000	–	7,200	7,200	127,200	17,200
1986	120,000	10,000	7,632	10,000	137,200	17,200
1987	120,000	–	8,232	8,232	145,432	25,432
1988	130,000	10,000	7,726	10,000	155,432	25,432
1989	130,000	–	9,326	9,326	164,758	34,758
1990	140,000	10,000	9,885	10,000	174,758	34,758

example, the landlord's costs increase by $10,000 every second year, prompting him to apply for whole building review, but they do not increase in the intervening years. In the years in which he applies for whole building review, his net income does not change, but in the non-review years it rises by the difference between the statutory increase and the actual cost increase. The landlord maintains the new higher income in the review years. In this example, net income increases from $10,000 in 1983 to $34,258 in 1990.

Landlords could exploit this feature of the Ontario system by loading discretionary costs into the Projected Year of whole building reviews and minimizing costs in other years—especially years that are to be used as Year 2 in a whole building review application. Since 1979 the practice of deferring and bulking up discretionary expenditures has not been counterbalanced by any method of reducing the statutory increase in rents in a year when the landlord's cost increases are less than the additional revenue he would receive, because tenants have not been able to challenge rent increases less than the statutory increase on the basis of the landlord's costs.

The problem would be reduced if the time frame for determining the landlord's cost increase were not limited to a two-year period or if tenants had the right to dispute a statutory increase, as was permitted by the 1975 Act.

The difference between the Ontario rent review system and an ideal cost-pass-through system is accentuated by two common occurrences: (i) errors in cost projections and (ii) termination or reduction of cost items.

11.1.1 Errors in Cost Projections

In a whole building review the determination of the increases in allowable costs is based on cost projections, or estimates, for the coming year (the Projected Year) and on actual costs for the current year (Year 2). But the actual costs for the Projected Year may turn out to be either greater or less than the estimated costs. Consequently, the allowed increase in rental revenue, which was determined by the difference between the estimated costs for the Projected Year and the actual costs for Year 2, may have been too small or too large.

With the current system, errors resulting from incorrect cost estimates may be corrected the following year by the cost correction provision. Rent Review Guideline No. RR-17 comments on cost correction:

> The Commission in making its determination for the projected year, is therefore required to consider not only actual costs experienced by the landlord, but also projected or reasonably anticipated costs for the coming year which a landlord may experience in respect of his operation of the residential complex. These projected costs, even though they may be based on the best information available at the time, are nonetheless estimates only. Actual costs, when incurred, may in fact prove to be greater or less than these estimates. Where costs are considered on the basis of estimates or projections, they should subsequently be adjusted as soon as the actual costs are known and can be substantiated. Such an adjustment for rent review purposes is referred to as a Cost Correction. In the opinion of the Commission it is desirable that the difference between the projected or estimated costs as accepted and found by the Commission, and the actually incurred costs for the same time period be considered and an appropriate adjustment made, when the landlord applies for Whole Building Rent Review in the year immediately following the year in which those cost determinations were made based on the projected or estimated costs. If the actual costs as found by the Commission were greater than the projected costs, then the difference may be allowed as another item of increase (positive cost correction) in addition to the current cost increases. If the actual costs were less than the projected costs, then the difference may be treated as a reduction (negative cost correction) of the current cost increases. (p. 1)

A cost correction allowed under the current whole building review system equals the difference between the estimates accepted for Projected Year costs in the first whole building review and the actual costs for that year, which are reported as Year 2 costs in the whole building rent review the following year. If the actual costs were overestimated, the error is subtracted from the increase that would otherwise be allowed; if the actual costs were underestimated, the error is added to the increase allowed.

The same result could be achieved by replacing actual Year 2 costs in the second review with the estimated Projected Year costs from the first review. That procedure would incorporate the cost correction into the calculation of increase in costs, thereby ensuring that the landlord was no better or worse off financially after the second year than if he had projected his costs correctly in the first review.[3]

The two methods of making a cost correction can be illustrated by considering the example of a landlord with costs of $100,000 in 1983 and projected costs of $110,000 in 1984. If he applied for a whole building review, he would be awarded a total rent increase of $10,000 to cover the projected cost increase. If his actual costs turned out to be only $108,000 in 1984 and he then applied for whole building review for a rent increase for 1985 based on projected costs of $120,000 for that year, a cost correction would be made.

The current method of cost correction would entail calculating the increase in costs ($12,000 since actual 1984 costs are $108,000 and projected costs for 1985 are $120,000) and then subtracting $2,000 as a cost correction for the overestimate of 1984 costs that led to an award of $2,000 more than the actual costs could have justified. The allowed increase for 1985 would be $10,000.

The same allowed increase for 1985 could be calculated by subtracting the 1984 projected costs ($110,000), which were used in the first whole building review application, from the 1985 projected costs of $120,000. The allowed increase for 1985 would be $10,000, as determined above. This alternative approach illustrates the principle of base year review, which is outlined later in this chapter.

As the scheme of rent review now functions, a cost correction can be made only if the landlord chooses to apply for rent review in the year after the application that gave rise to the required cost correction. It is entirely the landlord's decision whether he will make an application and, if he does, when he will make it. If he does not apply for a whole building review in the subsequent year—perhaps because the total increase in allowable costs would be less than the statutory rent increase—then the error remains in the rent base. Usually no cost correction is made, even if the landlord returns for another whole building review two years after the incorrect increase. Therefore, errors in the pass-through of costs may permanently raise or lower the landlord's net income unless there is an annual whole building review. Because the landlord controls the timing of whole building reviews, it can be expected that cost corrections will normally be made only when they

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[3] The excess or deficiency in the rent collected during the Projected Year of the first review will not be recovered; however, a temporary adjustment to rent similar to the surcharge discussed in section 11.3.2 could be used to make the correction if the added complexity is considered worthwhile.

TABLE 8: Errors in Cost Projections (Cost Correction): Annual Review

	Costs		Annual Review[a]				
Year	Projected[b]	Actual[b]	Projected Cost Increase[c]	Cost Correction	Actual Revenue	Actual Net Income[d]	Net Income Without Cost Correction
1983	—	$90,000	—	—	$100,000	$10,000	$10,000
1984	$98,000	96,000	$8,000	—	108,000	12,000	12,000
1985	104,640	102,480	8,640	($2,000)	114,640	12,160	14,160
1986	111,638	109,349	9,158	(2,160)	121,638	12,289	16,449
1987	119,240	116,767	9,891	(2,289)	129,240	12,473	18,922
1988	127,251	124,630	10,484	(2,473)	137,251	12,621	21,543

[a] Annual reviews are assumed to take place at the beginning of each year.

[b] The actual increase in costs is 6 per cent of the previous year's revenue and the projected increase is 8 per cent thereof.

[c] The projected cost increase is determined by a whole building review at the end of the Year 2 using the year's actual costs and the current year's projected costs.

[d] With annual reviews, projected annual net income exceeds the 1983 net income by an amount equal to the difference between the cost pass-through (Projected Year's projected costs minus last year's actual costs) and the actual cost increase (Projected Year's actual costs minus last year's actual costs).

favour the landlord or when his other cost increases are large enough to warrant a whole building review despite an unfavourable cost correction.

In Tables 8 and 9, the effects of overestimating Projected Year costs are contrasted for the cases with annual whole building reviews and with alternate year (biennial) whole building reviews.

If a landlord with a net income in 1983 of $10,000 applies for a whole building review every year (see Table 8), his net income will equal $10,000 plus the amount by which that year's costs are overestimated. If there is no cost correction, the overestimates will increase net income cumulatively; hence, by 1988 his net income will have risen to $21,543.

If the landlord applies for whole building review in alternate years (see Table 9) so that he avoids cost corrections, then his net income will rise to $16,910 by 1988. In the example shown, it is assumed that the landlord estimates that his cost increases will equal 8 per cent of the previous year's revenue whereas his actual cost increases are only 6 per cent of revenue. If the Projected Year costs are underestimated, the effect on net income will be the opposite: hence a landlord who does not apply for whole building review every year will suffer a decline in net income equal to the cumulative value of his underestimates. Clearly, landlords have a strong incentive not to underestimate their Projected Year costs.

TABLE 9: Errors in Cost Projections (Cost Correction): Biennial Review

	Costs		Biennial Review			
Year	Projected[a]	Actual[a]	Projected Cost Increase[b]	Cost Correction	Actual Revenue	Actual Net Income
1983	–	$90,000	–	–	$100,000	$10,000
1984	$98,000	96,000	$8,000	–	108,000	12,000
1985	104,640	102,480	–	–	114,480	12,000
1986	111,638	109,349	9,158	–	123,638	14,289
1987	119,240	116,767	–	–	131,056	14,289
1988	127,251	124,630	10,484	–	141,540	16,910

[a] The actual increase in costs is 6 per cent of the previous year's revenue and the projected increase is 8 per cent.

[b] The projected cost increase is determined by a whole building review at the end of the current year using that year's actual costs and the current year's projected costs.

The advocates for the tenants' interests and the advocates for the landlords' interests took quite different positions on what should be done. The submission on behalf of the tenants proposed a course of action that went beyond the correction of costs. It was that a tenant should have the right to dispute not only a rent increase ordered on a rent review application but any rent increase at all. The tenants had this right under the 1975 Act, which provided that they could require the landlord to justify a rent increase whether or not it was within the statutory limit.

The landlords replied that although there are imperfections in the system, rent regulation dispenses rough justice between the opposed interests and it was best to let matters stand as they are. The advocate for the landlords' interests said:

> . . . rough justice isn't always the best answer but I say that there is little choice in this case. Rough justice . . . is the trademark of the Residential Tenancies Act. Rough justice has to be a feature of legislation that was designed for temporary purposes, and to try to incorporate a feature, a permanent feature into legislation, which on the whole was designed only to look at a year to year basis is no longer fine tuning the system, it is changing the system in my submission.
>
> I say . . . that for the most part the roughness in the justice operates against the people being regulated on the whole and that is the landlord. (Transcript, Sept. 7, 1983, p. 157)

From the evidence presented in the first phase of the Inquiry, it is not possible to draw up an overall balance sheet that would show whether landlords or tenants suffer or benefit the most. Hence, all that can be done in this Report is to point out the situations where the system in practice appears to deviate from its principles, and recommend corrections that would make the system more equitable.

11.1.2 Termination or Reduction of Cost Items

Costs that are incurred by a landlord and used to justify a rent increase at a particular time may end or decrease in a later year. For example, if a landlord makes a capital expenditure, he recovers the cost over a specified number of years. The allowance for a capital expenditure is based on a calculation that enables the landlord to recover the capital cost of the expenditure plus the deemed or actual interest incurred to finance the capital expenditure during the specified period. Therefore, at the end of the specified number of years, the landlord will have recovered his expenditure plus interest but the rent increase attributable to the expenditure will continue unless some action is taken to remove it. If the landlord returns for a whole building review at a time when Year 2 is the last year of the specified period of years, he will have no basis for claiming the allowance in the Projected

Year and the rent increase in the Projected Year will be adjusted accordingly. If he does not return for a whole building review until a later year, however, there will be no observable cost reduction between Year 2 and the Projected Year and the allowance for the capital expenditure will remain in the rents that the landlord is permitted to charge. The resulting benefit to landlords has been called "a cost no longer borne" by the tenants' advocates.

A cost no longer borne can also result from a reduction in a cost that was used to justify a rent increase greater than the statutory increase. For example, if financing costs at a particular interest rate are allowed, and if the landlord refinances at a lower interest rate, he may no longer be paying the full amount originally allowed.

If some cost items expire or are reduced, the net increase in costs may be less than the statutory increase. By taking the statutory increase, the landlord is able to increase his rental revenue by more than his actual cost increases. Although the intent of a cost-pass-through system may be to pass the net aggregate increase in costs through to the tenants, the system in Ontario does not always have that result.

Table 10 shows the effect on net income of not reducing the allowed rent increase when a capital expenditure is fully recovered. In this example, the landlord incurs a capital expenditure with a five-year recovery beginning in 1984. From 1984 to 1988 his total revenue is $10,000 more than it would have been if he had not incurred the capital expenditure. By 1988 he has fully recovered both the capital cost of the item and the actual or deemed interest cost for financing the expenditure. The annualized cost of the capital expenditure is included in total costs for the years 1984 to 1988. Since the cost is fully recovered, the annualized cost of the capital expenditure is not an allowable cost after 1988. But since the landlord does not apply for whole building review in 1989, the expiry of the capital expenditure component of total allowable costs does not result in a corresponding rent reduction. The $10,000 allowance, which previously compensated the landlord for the annualized cost of the capital expenditure, becomes an addition to net income, which increases to $20,000.

Because the landlord controls the timing of whole building reviews, it can be expected that reviews will be held only when there are large cost increases between Year 2 and the Projected Year. If there are cost reductions or terminations leading to cost no longer borne situations, landlords can be expected to avoid whole building reviews. As a result it is likely that cost increases are passed through to the tenant but that cost decreases are not.

One way to handle the problem would be to require annual reviews for any residential complex for which rent increases higher than the statutory increase had been permitted. In fact, an ideal cost-pass-through system would require annual rent review hearings for all residential complexes. But it is

TABLE 10: Example of Termination of a Cost Item

Year	Allowable Operating Costs[a]	Increase in Allowable Operating Costs[a]	Annualized Cost of Capital Expenditures[b]	Allowance for Capital Expenditures[c]	Total Allowable Costs	Total Allowable Rent Increase	Total Revenue	Net Income
1983	$100,000	–	0	–	$100,000	–	$110,000	$10,000
1984[d]	106,600	$6,600	$10,000	$10,000	116,600	$16,600[e]	126,600	10,000
1985	114,196	7,596	10,000	0	124,196	7,596	134,196	10,000
1986	122,248	8,052	10,000	0	132,248	8,052	142,248	10,000
1987	130,783	8,535	10,000	0	140,783	8,535	150,783	10,000
1988	139,830	9,047	10,000	0	149,830	9,047	159,830	10,000
1989[f]	149,419	9,589	0	0	149,419	9,589	169,419	20,000
1990	159,585	10,166	0	0	159,585	10,166	179,585	20,000

[a] For simplicity the increase in allowable operating costs is set equal to the statutory increase (6% of the previous year's total revenue).

[b] The annualized cost of capital expenditures equals the annual blended payment of principal and interest deemed to be necessary to retire the debt incurred to finance the capital expenditure. The permitted amortization period is the assumed lifetime of the capital item—in this case five years. The capital expenditure will be wholly recovered in the five years ending in 1988.

[c] The allowance for capital expenditures equals the *increase* in the annualized cost of capital expenditures if the landlord applies for whole building review.

[d] The only year for which the landlord applies for a whole building review increase is 1984. In other years, he takes the statutory increase, which is assumed to equal the increase in costs.

[e] The total allowable rent increase equals the sum of the increase in the allowable operating costs plus the allowance for capital expenditures.

[f] If there were an application for a whole building review increase for 1989, the Commission could take the termination of the allowance for the capital expenditure into account. In this example the landlord would not initiate a whole building review because the justified increase would not be more than 6 per cent.

obviously out of the question to hold annual whole building reviews for the estimated 125,000 residential complexes in Ontario; even to require annual rent reviews for the more than 5,000 complexes that have gone to rent review would result in unacceptable administrative costs and burdens on all concerned. There are feasible alternatives, however: one is to permit tenants to intiate a review of the landlords' costs when there is a justifiable reason for doing so. In that way tenants could effect an adjustment when there was a significant cost termination or reduction. This alternative is discussed further in section 11.2 below.

11.1.3 The Concept of Base Year Review

Another approach is to apply the concept of "base year review" on the occasion of second and subsequent whole building reviews. This approach would not entail any additional administrative expense, and it would correct for the errors discussed in the previous sections. Furthermore, it would have the added benefit of vastly simplifying the task of verifying Year 2 costs in successive whole building review hearings, thereby streamlining the hearing process.

The special feature of a base year review is that the estimated Projected Year costs are compared to the estimated costs for the Projected Year of the preceding review application (called the base year in this Report)[4] in order to determine the amount of rent increase to which the landlord is entitled. This can be done even if the last review was many years earlier. Suppose, for example, that the owner of a complex went to whole building review in 1980 and that 1980 was Year 2 and 1981 was the Projected Year. If the landlord returned for a whole building review in 1985, then 1981 would be used as the base year and the Projected Year would be 1986. The landlord would be allowed a rent increase in 1986 such that the increase in his rental income from the 1981 base year to the 1986 Projected Year equalled the difference between the projected costs in 1986 and the base year costs in 1981. This method is illustrated in Tables 11 and 12.

Table 11 illustrates the difference between the current review system and the base year review system for a landlord who applies for whole building review in 1981 and 1986 and takes the statutory increase in each of the intervening years. It is assumed that operating costs are rising by less than the statutory increase and that there are two capital expenditures, each of which has a deemed allowance of $10,000, one beginning in 1981 and one in 1986. The first capital expenditure is fully recovered before the second

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[4] Difficulties arise in accounting for financing costs in certain situations unless the Projected Year of the first whole building rent review is used as the base year; hence, Year 2 of the first rent review should not be used as the base year.

TABLE 11: Example of Base Year Review: Costs Rising by Less Than Statutory Rate

Year	Operating Costs	Annualized Cost of Capital Expenditures	Total Allowable Costs	Increase in Allowable Costs	Statutory Increase	Projected Costs for Whole Building Review	Total Revenue		Net Income	
							Current Review System	Base Year Review	Current Review System	Base Year Review
1980	$100,000	0	$100,000	–	–	–	$110,000	$110,000	$10,000	$10,000
1981[a]	105,000	$10,000[b]	115,000	$15,000	$6,600	$117,000	127,000	127,000	12,000	12,000
1982	110,000	10,000	120,000	5,000	7,620	–	134,620	134,620	14,670	14,670
1983	115,000	10,000	125,000	5,000	8,077	–	142,697	142,697	17,697	17,697
1984	120,000	10,000	130,000	5,000	8,562	–	151,259	151,259	21,259	21,259
1985	125,000	0	125,000	(5,000)	9,076	–	160,335	160,335	35,335	35,335
1986[a]	130,000	10,000[b]	140,000	15,000	9,620	140,000	175,335	150,000	35,335	10,000

[a] Landlord applies for whole building review.

[b] In 1981 the landlord incurred a capital expenditure that had a four-year recovery. The deemed annual blended payment cost was $10,000; hence, the landlord is allowed a total recovery of $40,000 in four years. The effect of this capital expenditure is to increase the allowed pass-through in 1981 by $10,000. If the landlord were to apply for a whole building review in 1985, the allowed pass-through in that year could be reduced by $10,000 since the cost associated with the capital expenditure would be fully recovered. In 1986, he incurred a further capital expenditure, for which the Commissioner set an allowance of $10,000.

TABLE 12: Example of Multi-Year Review: Costs Rising by More than Statutory Rate

Year	Operating Costs	Annualized Cost of Capital Expenditure	Total Allowable Costs	Increase in Allowable Costs	Statutory Increase	Projected Costs	Total Revenue		Net Income	
							Current Review System	Base Year Review	Current Review System	Base Year Review
1980	$100,000	0	$100,000	–	–	–	$110,000	$110,000	$10,000	$10,000
1981	110,000	$10,000	120,000	$20,000	$6,600	$117,000	127,000	127,000	7,000	7,000
1982	120,000	10,000	130,000	10,000	7,620	–	134,670	134,620	4,620	4,620
1983	130,000	10,000	140,000	10,000	8,077	–	142,697	142,697	2,697	2,697
1984	140,000	15,000	155,000	15,000	8,562	–	151,259	151,259	(3,741)	(3,741)
1985	150,000	15,000	165,000	10,000	9,076	–	160,335	160,335	(4,665)	(4,665)
1986	160,000	15,000	175,000	10,000	9,620	175,000	175,000	185,000	0[a]	10,000

[a] If hardship allowance is considered, the landlord would be permitted total revenue of $178,500 under the current system; hence net income would be $3,500.

review. It is also assumed that the Projected Year costs are overestimated in the first review. Under the current review system, the cumulative effect of these factors, both of which increase the landlord's net income, is to raise it from $10,000 in 1980 to $35,335 in 1986. If the base year review approach were used to determine the allowed rents for 1986, they would actually be reduced, returning the landlord's net income to its original level of $10,000. If in order to avoid the rent reduction that would result from the application of base year review, the landlord did not apply for whole building review and took the statutory increase, then the total revenue for 1986 would be $169,955 ($160,335 plus 6 per cent) and net income would be $29,955 as compared to the net income of $35,335 realizable with the current review system.

Although base year review does not correct the deviations from an ideal cost-pass-through system in the years that a landlord takes only the statutory increase, it does correct the accumulated deviations when he applies for whole building rent review. As a result, it serves as a disincentive to landlords to return to review if they have benefited from the imperfections in the system in the years since the last whole building review. The next section, entitled "Rent Correction Hearings", describes a method of offsetting certain of the imperfections that may cumulatively benefit a landlord who does not apply for whole building review.

Table 12 shows a situation where a landlord has suffered from the cumulative effects of imperfections that have been reducing his net income. As in Table 11, he is assumed to apply for whole building review in 1981 and 1986. This landlord, however, underestimates his Projected Year costs in the first review and incurs cost increases that exceed the statutory increase and, in 1984, a capital expenditure that would increase his potential write-off but is unclaimed. The cumulative effect of all these factors is to reduce the landlord's net income from $10,000 in 1980 to a negative net income of $4,665 in 1985. Under the current system he is merely raised to a break-even position in the second review (he could also be given a hardship allowance to raise his net income to $3,500). With the base year system, however, all cost increases since the last review would be passed through, returning his net income to the $10,000 that he realized in Year 2 of the first review (1980).

***Recommendation 47.* The technique of base year rent review should be used in all whole building reviews for which the Commission receives applications after the policy change is announced. That is to say, in the case of a residential complex that had previously gone to whole building review, the Projected Year of the original review would be the base year for the subsequent whole building review, rather than Year 2.**

The effect of introducing base year review in whole building reviews, in conjunction with rent correction hearings, which are discussed in the next section, will be to bring the Ontario system very close to an ideal cost-pass-through system, which the current system was apparently intended to be. Hence, landlords will be locked into a fixed nominal net income. That result might be considered unfair in times of inflation.

No final position can be taken on what is a fair net income for landlords or a fair rate of increase in net income until the question of a landlord's return on equity is examined in the second phase of the Inquiry. In the meantime and if the recommendation for base rent review is adopted, it would appear reasonable to explicitly allow an increase in the landlord's net income as determined in whole building rent review applications in order to offset the effect of inflation on the landlord's net income. A more nearly ideal cost-pass-through system with a supplemental increase in revenue to give some consistency to the effect on landlords and tenants is preferable to the present regime, under which landlords can realize irregular or uncontrolled rent increases.

***Recommendation 48.* When the base year review technique is applied, an annual allowance that adjusts the landlord's net income to offset the effects of inflation should be ordered in whole building review applications. The rate of increase in net income allowed should not be more than the statutory rate of increase under section 125 of the *Residential Tenancies Act* as amended in accordance with Recommendation 19.**

The statutory rate of increase is suggested as the allowed rate of increase of net income rather than some direct measure of inflation. It is premature to discuss the relative merits of different rates for adjusting net income until the detailed examination of the implications for the landlord's return on equity is completed in the second phase of the Inquiry.

11.2 Rent Correction Hearings

Multi-year review will not take care of the situation where the landlord chooses not to go back to rent review or delays doing so for a number of years. The landlord's reasons may be quite legitimate, but the tenants should not have to suffer from continuing distortions in the rent base.

A procedure that could be followed was outlined by an official of the Commission who gave evidence to the Inquiry:

> My own opinion is that certain specific provisions should be there in the legislation that ... where such cost decreases are there tenants have a right to initiate an application. But once the application is initiated by a tenant or a group of tenants, whatever is considered fair, there should be an option provided to the landlord to file a whole-building review application within a certain period after the tenant-initiated application is filed.

> So once he files the whole-building review application, then that application will be considered in its normal course and the tenant application automatically gets merged into it, and it is only where a landlord does not follow or does not want to file a whole-building review application that the tenant-initiated application will be considered on its own merits. (Transcript, July 25, 1983, p. 37)

The position taken in this Report is that in certain circumstances the tenants should have the right to initiate rent correction hearings. The exercise of that right will raise preliminary problems for the tenants, because any action they may take will involve an expenditure of time and probably of money, and they will have to decide how to share the burden. A more serious problem might result from the outcome of the application. Even if rents were reduced by the amount of a cost no longer borne, the landlord might be stimulated to make a whole building rent review application that might result in a permitted rent increase greater than the statutory increase that the landlord could have imposed had there been no rent review application. The only recommendation made in this Report, however, with regard to the initiation of a rent correction hearing, bearing in mind that the consequences of a whole building review are unforeseeable, is that it should be authorized by at least 50 per cent of the tenants in the complex.[5]

The procedure for a rent correction hearing would be as follows: not less than 120 days before the beginning of an accounting year in which the rents, in the tenants' opinion, should be corrected or adjusted, the tenants could give the Residential Tenancy Commission and the landlord a notice that they are requesting a rent correction hearing to set the total rent permitted for the complex in the next accounting year.[6] The established accounting year would be used for purposes of the rent correction hearing.

A notice by the tenants requesting a rent correction hearing could be given only for the following purposes:

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[5] The method of determining 50 per cent of tenants is prescribed in section 8.5.

[6] As mentioned earlier in this Report, it should be provided in the Act or by regulation that a landlord who has chosen a particular twelve-month period as the accounting year for the cycle of Year 2 and the Projected Year in a rent review application should be deemed to be committed to that twelve-month period as the accounting year for all subsequent rent review applications unless the Commission permits a change. It is said in Guideline RR-17, under the heading "Change of Fiscal (sic) Year", "A change of accounting year for rent review purposes should be allowed only in very exceptional circumstances" (p. 5).

1. To correct a cost increase allowed on a previous rent review application made by the landlord.

2. To adjust the rents because of a specific cost no longer borne.

3. To adjust the rents because the state of maintenance and repair of the complex has declined or a service or facility has been discontinued, with the result that the landlord's costs have been reduced. This matter is dealt with at length in section 9.7.

The tenants' notice signed by 50 per cent of the tenants should specify one or more of (i) the cost correction that should be made, (ii) the particular cost previously incorporated in a rent increase for the complex that is alleged to be no longer borne, and (iii) the landlord's estimated saving due to a reduction in maintenance or repair or to the discontinuance of an identified service or facility that justifies a reduction in the rents. The notice might give the name(s) and address(es) of any person (or persons) representing the tenants to whom future information should be sent.

The Commission should set a date for the hearing that will be fifteen days before the beginning of the accounting year and should immediately notify the landlord that it has received the tenants' request and inform him of its content and the date set for the hearing. The notice should tell the landlord that the Commission has not verified the authenticity of the signatures to the request and has no opinion on the merits of the allegations in the tenants' request. It should also inform him of what he can do and of the consequences if he does nothing. His options would be as follows:

1. He can undertake to apply for a whole building rent review at least ninety days before the beginning of the accounting period. If all the requirements for a whole building rent review application are met, then the rent correction hearing will be superseded by the whole building review hearing.

2. He can request an immediate hearing to determine the validity of the tenants' application, but the date for the rent correction hearing will not be changed.

3. If the landlord does not act under (1), the Commission will proceed with the rent correction hearing to determine the rent increase permitted for the accounting year stipulated in the tenants' notice of request; the permitted rent increase will be the statutory increase reduced by the Commission's finding as to the cost correction or rent adjustment attributable to a cost no longer borne or a deterioration in maintenance and repair. No other matters should be considered at a rent correction hearing.

In a rent correction proceeding, the increase ordered for each unit in the complex would be the statutory increase for the year preceding the accounting year under review less an apportioned share of an amount that was (i) a cost no longer borne in the Projected Year, (ii) a necessary cost correction, (iii) the amount of a reduction in the landlord's costs of maintenance and repair since the Projected Year in the last rent review application, or (iv) the cost saving to the landlord of discontinuing a service or facility. Under section 5 of the 1982 Interim Act, the apportioned share for each unit would have to be determined on an equal percentage basis. If that section is allowed to expire, as recommended, unit rents could be equalized at the discretion of the Commission.

The calculation of the permitted rent increase in a rent correction proceeding would not be simple, and it might involve arbitrary findings by the Commission when the tenants' evidence regarding the landlord's costs was somewhat speculative. The rents would be corrected, however, only when the landlord had not made a whole building review application on his own account. In a rent correction hearing, the landlord would bear the burden of producing all necessary documents to show that the tenants' estimates of the relevant cost savings are incorrect.

Recommendation 49. **Provision should be made in the *Residential Tenancies Act* for tenant-initiated rent correction hearings to be conducted by the Commission to review allegations regarding cost corrections, costs no longer borne, and the state of maintenance and repair of the complex, such hearings to be superseded at the landlord's option by whole building rent reviews. Tenant-initiated rent correction hearings should be authorized by a tenant from each of at least 50 per cent of the rental units occupied by rent-paying tenants.**

11.3 Revenue Surplus or Deficiency (Revenue Lag)

11.3.1 General Comments

A deviation from the ideal cost-pass-through system arises if the increase in rents from Year 2 to the Projected Year does not equal the landlord's cost increases from Year 2 to the Projected Year. If the rent increase collected in the Projected Year is less than the cost increase, he will suffer a revenue deficiency. If the rent increase collected is more, he will enjoy a revenue surplus.

Whether or not there will be a revenue surplus or deficiency in the Projected Year for complexes where the units do not have a common anniversary date will turn on the relation between the rent increases permitted (or taken if the landlord did not go to rent review) in successive years. If the rent increase in Year 2 is greater than the rent increase in the Projected Year, the landlord will have a revenue surplus in the Projected Year. Conversely, if the rent increase in Year 2 is less than the rent increase the Projected Year, the landlord will suffer a revenue deficiency.

A greatly simplified demonstration of revenue deficiency and surplus is to assume a single-unit complex in which the unit has a rental unit year commencing March 1 and a basic unit rent of $400 for the preceding month. The accounting year for the complex is the calendar year. The landiord has been allowed a cost increase of $60 a year, or $5 a month, for the first year, and the rent will increase to $405. Rents collected in that year will be:

2 months @ $400.00	800.00
10 months @ $405.00	4,050.00
	$4,850.00

For the second year the landlord is allowed a cost increase of $120, or $10 a month, and the rent will increase to $415 a month. Rents collected in that year will be:

2 months @ $405.00	810.00
10 months @ $415.00	4,150.00
	$4,960.00

Rents collected in the second year will be $110 more than in the first year, but the cost increase is $120, for a revenue deficiency of $10.

For the third year the landlord is allowed a cost increase of $60, or $5 a month. The rent will increase to $420 a month, and the rents collected in the third year will be:

2 months @ $415.00	830.00
10 months @ $420.00	4,200.00
	$5,030.00

The increase in rents collected will be $70 in the third year, but the cost increase was only $60 resulting in a revenue surplus of $10.

The technical analysis that follows this section deals at length with revenue deficiency and revenue surplus and describes some possible remedies. The first and second methods of correcting for revenue deficiency or revenue surplus are to adjust the permitted rent increase and to add a surcharge to the permitted rent increase. The advantage of a surcharge over an adjustment is that the surcharge does not result in what the technical analysis calls volatility in rent changes from year to year. Certainly such extreme variations as are displayed in Table 15 in the technical analysis would be quite unacceptable, and for that reason the rent adjustment method of correcting for revenue deficiency or revenue surplus is not recommended.

As the technical analysis points out, the surcharge method and, for that matter, the adjustment method have the disadvantage that they would commit the landlord to annual whole building rent reviews. Although that might be tolerable for some landlords, particularly those who operate large complexes where revenue deficiencies could be substantial, it is generally unattractive. For many landlords, the relief afforded by a surcharge would not adequately compensate for the cost and effort of submitting annual rent review applications.

The burden on the tenants of annual reviews must also be considered. Tenants are not obliged to participate in rent review applications, but to protect their economic interests, it is often desirable that they do so. Tenants are not responsible, however, for the existence of revenue deficiencies, and remedial action, which would be largely for the benefit of landlords and which would entail annual rent review hearings, would be an undesirable burden on the tenants.

Finally, there would be added demands on the personnel and facilities of the Commission: not only would it have to conduct a considerable number of hearings that would otherwise not take place, but it would have to calculate the surcharges. What is more, the Commission would have the task of following up on landlords who would have to be brought back for annual rent reviews when it was not to their financial advantage. If the surcharge method (or for that matter the adjustment method) of correcting for revenue deficiencies were adopted, rent review would become compulsory rather than voluntary for those landlords who took advantage of it. This would be a substantial step beyond the recommendation for reviews resulting from rent correction hearings. (See section 11.2.)

The third method of dealing with revenue deficiency or surplus is to remove the cause by bringing the units in the complex to a common anniversary date. That could be done in two ways. One would be for the landlord to defer giving Notices of Rent Increase until they would take effect for all the units on the same date, which would be a day following the expiry of the rental unit years of all the units in the complex. The landlord would thus forgo, possibly for up to eleven months, the rent increases that he might otherwise have charged for units whose rental unit years ended before that date. This would be a recurring loss that would increase from year to year as rents increased. This method of arriving at a common anniversary date would be unacceptable.

The second and more reasonable way of achieving a common anniversary date would be to amend section 124 so that, on one occasion only, a landlord could terminate rental unit years before they expired for the purpose of setting a common anniversary date. It would be solely at the landlord's discretion whether to adopt a common anniversary date, and, if so, when. The common anniversary date should conform to the beginning of an accounting year. If an accounting year had not been established by a whole building review, the common anniversary date would establish the accounting year for any subsequent review.

The technical analysis explains what can be done to correct for revenue deficiency or surplus in the transitional year following a common anniversary date when the rent increase awarded for that year was greater or less respectively than the previous rent increase.

The change to a common anniversary date would normally result in the tenants paying a smaller rent increase than they otherwise would, but the increase would take effect sooner. The net effect on the tenants' total rent for the year would depend on the specific situation. This matter is covered in more detail in the technical analysis.

That would not, however, adjust for the fact that because of the introduction of a common anniversary date, tenants with the same rent base would not necessarily all pay the same amount of rent in the year preceding the year in which the common anniversary date came into effect. This problem would be somewhat alleviated, although not in a way that can be quantified, by the fact that the tenant who paid the lower amount of rent would suffer the disadvantage of a shorter interval between rent increases. It can be observed that units with the same rent bases but different rental years are not equal in the first place, since there is some advantage in paying a rent increase later in the rent increase year; that advantage, however, would disappear with the introduction of a common anniversary date. That there may be differences in the amount of rent paid in the year before a common anniversary date is established, however, is not considered to be a compelling reason for not adopting a common anniversary date.

The Inquiry was informed that some landlords, for business and management reasons, would not be in favour of a common anniversary date. The chief objection is understood to be the extra burden of giving Notices of Rent Increase to all the tenants at one time. The recurrence of revenue deficiencies and surpluses is, however, an inherent imperfection in the scheme of rent review under the 1979 Act and, as noted in the technical analysis is particularly prejudicial to landlords. Where there is an acceptable method of dealing with the matter, landlords should not be denied the opportunity of choosing that course if they think there is a problem.

***Recommendation 50.* Section 124 of the *Residential Tenancies Act* should be amended to permit a landlord, on one occasion only in order to establish a common anniversary date for the units in a residential complex, to give Notices of Rent Increase to take effect before the expiry of the twelve-month period following the previous rent increases. A common anniversary date should be**

established by an order of the Commission setting rent levels and the effective date of rent increases for all units in the residential complex.

11.3.2 Technical Analysis[7]

This section provides a technical analysis of the effect of staggered, or delayed, rent increases on a landlord's net income. It is assumed that, in an ideal cost-pass-through system, cost increases in any accounting period are exactly offset by increased revenue; hence, net income is constant. Consequently, if a landlord's net income increases as a result of the staggering of rent increases, the effect can be termed revenue surplus. If net income decreases, it can be termed revenue deficiency.

For purposes of this analysis, net income is defined as the approved rental income of a landlord, minus the allowable costs as determined by the Commission. It is assumed that net income is not affected by anything other than the timing of the rent increases. Specifically, there are no costs no longer borne, there are no vacancies, and the landlord does not take the statutory increase when the justified increase in allowable costs is less than the resulting increase in rental revenue. Furthermore, it is assumed that landlords comply with the notice requirements of the 1979 Act so that the rent for the unit can be increased on the normal anniversary date; hence, the interval between rent increases is exactly twelve months.

This analysis will examine several methods of eliminating revenue deficiencies and revenue surpluses. Theoretically, each method is capable of eliminating a revenue deficiency or surplus; however, the methods differ significantly in their administrative simplicity and, therefore, their acceptability and practicality.

A revenue deficiency (surplus) can only be eliminated by increasing (decreasing) the landlord's total rental revenue in the accounting year, which necessarily requires the tenants to pay more (less) rent. All the methods of eliminating revenue deficiency or surplus require equivalent adjustments to the total *annual* rent paid by the tenants of a residential complex. The only difference among the methods is in the distribution of the total rental costs among units and through the accounting year. The only way to restrict the inherent cost that must be borne by the tenants in a residential complex if a revenue deficiency is to be corrected is to offset the revenue deficiency only partially. Similarly, the cost to a landlord of eliminating a revenue surplus can be reduced only if the surplus is not fully offset.

Although the analysis indicates the advantages and disadvantages of each method of eliminating revenue deficiencies and surpluses, nothing can be concluded on the basis of this analysis about the desirability of eliminating revenue deficiencies and surpluses within the context of Ontario's system of rent regulation.

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[7] This section is based on a memorandum prepared by John Todd, Research Director of the Inquiry.

The first part of the analysis derives a mathematical definition of revenue deficiency and surplus for the simple case where the rents in all units are the same. To show that the implications of the simpler model can be generalized, a more elaborate formula is also developed for a residential complex where the rents are not all the same. The second part of the analysis examines three methods for eliminating revenue deficiencies and surpluses: (i) adjusted permitted rent increase, (ii) surcharge on rent; and (iii) common anniversary date.

Revenue Deficiency and Surplus Defined

For the purposes of this analysis, revenue deficiency is defined as a difference between a landlord's total justified rent increase and the actual increase in his rental revenue. The analysis is restricted to revenue deficiencies and surpluses that are attributable to the interval between the beginning of the accounting year and the effective date of increase in rents for the individual units in a residential complex. If the actual rental revenue increases by more, rather than less, than the justified increase, then it is considered to be a revenue surplus rather than a revenue deficiency.

Since the landlord's total justified rent increase equals the increase in his allowable costs, a revenue deficiency also represents the amount by which the actual increase in rental revenue falls short of the increase in allowable costs. This is equivalent to the amount by which the landlord's net income declines from one year to the next. A revenue surplus therefore represents an increase in the landlord's net income.

Rental Units with Equal Base Rents. Assuming for the sake of simplicity that all units in a residential complex have the same base rent, the size of a revenue deficiency or surplus resulting from the time lag in implementing a rent increase can be defined mathematically as:

$$D_p = (R_p - R_2)N - [(R_2 - R_1)N_B + (R_p - R_2)N_A], \qquad (1)$$

where

D_p is revenue deficiency or surplus in the projected year,

R_1, R_2, R_p are revenues per month (monthly rent) in Year 1, Year 2, and the Projected Year respectively,

N_B and N_A are the number of unit months before and after the rent increase is implemented, respectively, and

N is the total number of unit months in the Projected Year (12 x no. of units, and $N = N_B + N_A$).

In equation (1), a revenue deficiency in the Projected Year, D_p, is defined to be equal to Year 2 revenue, $R_1N_B + R_2N_A$, plus the increase in allowable costs, $(R_p\text{-}R_2)N$, minus the actual Projected Year revenue, $R_2N_B + R_pN_A$. If D_p has a negative value, then it represents a revenue surplus.

The term $(R_p\text{-}R_2)N$ represents the increase in allowable costs for the Projected Year, since the justified increase in the monthly rent, $R_p\text{-}R_2$, is determined by dividing the increase in allowed costs by twelve and then apportioning the total permitted rent increase among the units. Since it is assumed in this section that the base rents are equal for all units and that the rents for all units are increased equally, there is no need to differentiate among units.

In equation (1) the term $(R_2\text{-}R_1)N_B$ represents the actual additional rents collected during the months before the ordered increase takes effect. The tenant in the unit pays a rent of R_2 before the rent increase takes effect, as compared with R_2 in the corresponding months of the previous year. The term $(R_p\text{-}R_2)N_A$ represents the actual additional rents collected in the months after the rent increase takes effect. By substituting $N_B + N_A$ for N, equation (1) can be simplified to:

$$D_p = [(R_p\text{-}R_2) - (R_2\text{-}R_1)]N_B, \text{ or}$$

$$D_p = (R_p + R_1\text{-}2R_2)N_B. \qquad (2)$$

Equation (2) shows that a revenue deficiency or surplus equals the difference between the allowed rent increase, $R_p\text{-}R_2$, and the actual increase in rental revenue. The actual increase is $R_2\text{-}R_1$ before the allowed increase takes effect and $R_p\text{-}R_2$ after the increase takes effect. A difference can exist only during the N_B unit months of the Projected Year before the rent increase takes effect.

Either a revenue deficiency (D_p is greater than 0) or a revenue surplus (D_p is less than 0) may result from the time lag of the rent increase, depending on the relative values of $R_p\text{-}R_2$ and $R_2\text{-}R_1$ and the sign of N_B (positive or negative). The number of months before the rent increase takes effect, N_B, can be negative for a particular unit if the effective date for the unit's rent increase is before the beginning of the Projected Year.

If N_B is positive, indicating that the rental unit year lags behind the accounting year, and if R_p-R_2 is greater than R_2-R_1, the lag results in a revenue deficiency. If R_p-R_2 is less than R_2-R_1, the lag results in a revenue surplus. If the two terms are equal, there is neither a deficiency nor a surplus. If N_B is negative, those criteria are reversed.

In other words, if the effective dates of the rent increases for the rental units in a residential complex are after the beginning of the Projected Year and the dollar value of the increase in monthly rents in the Projected Year exceeds that in Year 2, the landlord's rental revenue from the complex will increase by less than the total justified increase determined by the Commission. If the dollar value of the monthly rental increases in the Projected Year is less than that in Year 2, the landlord's total revenues will increases by more than the justified increase. Put even more simply: if the implementation of a rent increase is subject to a lag and the current year's rent increase is greater than the previous year's rent increase, then the landlord's net income will decline; if the rent increase is less than the previous year's increase, then the landlord's net income will increase. Note that it is the *change* in the rent increase, not the increase itself, that determines whether there is a revenue deficiency or surplus.

Viewed in that way, a revenue deficiency or surplus occurs every time the size of the rent increase changes, regardless of whether the landlord has gone through rent review or taken the statutory increase.[8] Consider the typical case of a landlord who is allowed a rent increase greater than the statutory rate, having taken the statutory increase in the previous year. It is evident that a revenue deficiency will occur in the Projected Year if the rent increases do not take effect immediately. Assuming, however, that the landlord does not request, or is not permitted, an increase higher than the statutory rate the following year, he will realize a revenue surplus that year, which will return his net income almost to its previous level. The landlord's net income falls below its previous level only temporarily. Normally it will not exceed that level as a result of revenue deficiency and surplus because usually the rent increase first becomes larger, and then smaller.[9] Consequently, the landlord usually suffers a decline in net income for the years in which he is awarded an increase above the statutory rate. This loss is not offset by higher than normal net income in later years. The subsequent revenue surplus only returns the landlord to his previous net income level—or actually slightly below—because the dollar value of the statutory increase gets larger as the base rent increases. Furthermore, if the landlord's cost increase is never less than the revenue increase permitted by the statutory rate, his net income will slowly decline over the years as the dollar value of the statutory increase grows since there will be a small revenue deficiency each year.

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[8] If a landlord takes the statutory increase, allowed costs are implicitly equal to total revenue multiplied by the statutory percentage (currently 6 per cent). If actual costs are less than this amount, his net income will increase by the difference between implicitly allowed costs and the actual increase in costs minus any revenue deficiency.

[9] Of course, the landlord may realize gains in his net income owing to other factors such as those discussed elsewhere in this report, or by taking the statutory increase when actual allowable cost increases would have justified less than that increase. Overall, net income may increase.

A revenue deficiency or surplus resulting from a lag in relation to the total rental revenue permitted for a unit is given by:

$$\begin{aligned} D_p/(R_pN) &= ([(R_p-R_2)-(R_2-R_1)]N_B)/(R_pN) \\ &= [(R_1+R_p-2R_2)/R_p]\,[N_B/N]. \qquad (3) \end{aligned}$$

This value is the product of two ratios. The first ratio is the difference in the rent increases for the Projected Year and Year 2 divided by the Projected Year's rent. The second ratio is the proportion of the total rental months that fall before the rent increase takes effect. The significance of a revenue deficiency or surplus, compared to other imperfections in the pass-through of costs can be readily determined by applying equation (3) to any particular situation.

Rental Units with Different Base Rents. The preceding analysis can be extended to calculate the magnitude of a revenue deficiency or surplus for a residential complex in which all units do not have the same rent base or the same rent increases. Even with the equal apportionment provision of the 1982 Interim Act in force, the approved rent increases are equal in percentage terms, which normally implies that the rent increases for the different units are not equal in dollar value.

Equation (1) can be generalized by adding a subscript i, to identify individual units, and then aggregating across units. Thus, equation (1) is rewritten as:

$$\begin{aligned} D_p = \sum_{i=1}^{U} \; & [(R_{p,i}-R_{2,i})N_i-((R_{2,i}-R_{1,i})N_{B,i} \\ & +(R_{p,i}-R_{2,i})N_{A,i})], \qquad (4) \end{aligned}$$

where

U is the total number of rent-controlled units in the residential complex and

N_i is the number of months in the Projected Year for a single unit ($N_i = N_{B,i} + N_{A,i} = 12$).

Letting C_p be the increase in the allowable costs for the residential complex for the Projected Year,[10] equation (4) can be rewritten as:

$$D_p = C_p - \sum_{i=1}^{U} [(R_{2,i}-R_{1,i})N_{B,i} + (R_{p,i}-R_{2,i})N_{A,i}]. \qquad (5)$$

Like equation (2), equation (4) can also be rewritten as:

$$D_p = \sum_{i=1}^{U} [R_{p,i}+R_{1,i}-2R_{2,i}]N_{B,i}. \qquad (6)$$

The interpretation of equations (4), (5), and (6) is the same as for (1) and (2) except that the revenue deficiencies and surpluses have to be calculated for the individual units before summing the residential complex as a whole.

Example. During the Inquiry's hearings, one of the witnesses called by counsel for the landlord's umbrella group presented a numerical example that illustrates revenue deficiency and surplus. While it should be borne in mind that neither this nor any other example can be viewed as typical and that this particular example demonstrates what is essentially the worst case from the landlord's viewpoint, it is nevertheless a helpful illustration of revenue deficiency and surplus. Table 13 is a reconstruction of the example, which was presented to the Inquiry in the form of a table entitled "Analysis of Revenue Lag Due to Staggering of Rent Increases". The original table is Exhibit 86 of the first-phase hearings.

The residential complex in Table 13 consists of twelve identical units, each having a different rental unit year—one starting on the first of each month. The accounting year for rent review purposes is assumed to be January 1 to December 31. All units pay the same amount of rent in December of each year. For the first unit the rent rises on January 1, for the second on February 1, and so on. As a result of this schedule of increases, rent is paid at the same rate as the previous December for 66 unit months of the 144 unit months of the Projected Year (12 units x 12 months each). The approved Projected Year rent is paid for 78 unit months.

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[10] $\sum_{i=1}^{U} (R_{p,i}-R_{2,i})N_i = C_p$.

TABLE 13: Example of Revenue Deficiency and Surplus

Year	Total Allowable Costs	Increase in Allowable Costs	Financial Loss Allowed	Total Justified Increase		Approved Rent	Actual Revenue[b]	Net Income	Revenue Surplus[c] (Deficiency)
				Amount	Percentage[a]				
1981[d]	–	–	–	–	–	$377.36	–	–	–
1982[d]	$60,000	–	–	–	6.0%	400.00	$56,106	($3,894)	–
1983	65,000	$5,000	$3,894	$8,894	15.4	461.76	62,417	(2,583)	($2,583)
1984	71,000	6,000	0	6,000	9.0	503.43	69,743	(1,257)	1,326
1985	77,000	6,000	1,257	7,257	10.0	553.83	76,425	(575)	(575)
1986	83,000	6,000	0	6,000	7.5	595.50	83,002	2	577
1987	90,000	7,000	0	7,000	8.2	644.11	89,544	(456)	(458)

a The percentage total award is: $\dfrac{\text{amount of total award}}{\text{previous year's approved rent x 12 units x 12 months}}$ x 100%

b Actual revenue is (previous year's approved rent x 66) + (current year's approved rent x 78).

c Revenue surplus (deficit) is: previous year's actual revenue + amount of total award – current year's actual revenue.

d The only information included for 1981 and 1982 is that which is required for the subsequent year's calculations.

SOURCE: The operating costs assumed and initial rent level are based on the Analysis of Revenue Lag Due to Staggering of Rent Increases, which is Exhibit 86 of the Inquiry's first-phase hearings. Minor arithmetic corrections have been made to the numbers submitted.

Table 13 contains both revenue deficiencies and revenue surpluses, as is shown in the last column; however, the preponderance of deficiencies leads to a large accumulated financial loss. This outcome results from the assumptions that the landlord is initially in a financial loss position, that the increase in allowable costs (exclusive of the financial loss) never declines, that the statutory increase is never greater than the justified increase, and that hardship allowance is not considered. Different assumptions could easily lead to significantly different results, including the possibility that the landlord's net income increases. It is interesting that the restriction stated in the Guide that prevents the landlord from being permitted the 1983 financial loss as part of the 1984 justified increase (a financial loss is not recognized in the year following the full allowance of a financial loss) is a primary determinant of the results observed. As Table 14 shows, if that restriction were removed, the landlord, in this example at least, would have a positive net income after 1983, although the apparent intention of the allowance of financial loss provision is only to increase the landlord's rental revenue to the break-even point.

While this example and the other numerical illustrations based on it that appear throughout this section may be helpful in understanding the analysis, they cannot be used to generalize about the effects of revenue deficiency and surplus. Only the generalized algebraic model can serve that function.

Correcting Revenue Deficiency or Surplus

Adjusted Permitted Rent Increase. It is possible to devise a rent increase formula that eliminates revenue deficiencies and surpluses. In a year when the allowable cost increase was larger than the previous year, the rent increase that the landlord was permitted would have to be raised to offset the revenue deficiency that would otherwise occur. Conversely, if the allowable cost increase declined, the permitted rent increase would have to be reduced to offset the revenue surplus. Such adjustments would have to be made every year unless the increase in allowable costs happened to equal that of the previous year.

An exact correction can be achieved by apportioning the revenue deficiency or surplus among the unit months that fall within the Projected Year after the effective date of the rent increases for individual units. This adjustment would be added to the justified costs in determining the allowable rents for a residential complex. The adjusted rents would be given by:

$$R^*_{p,i} = R_{p,i} + A_{p,i}\,, \qquad (7)$$

where

TABLE 14: Example of Revenue Deficiency and Surplus—Financial Loss Allowed in Consecutive Years

Year	Total Allowable Costs	Increase in Allowable Costs	Financial Loss Allowed	Total Justified Increase		Approved Rent	Actual Revenue	Net Income	Revenue Surplus (Deficiency)
				Amount	Percentage				
1981	–	–	–	–	–	$377.36	–	–	–
1982	$60,000	–	–	–	6.0%	400.00	$56,106	($3,894)	–
1983	65,000	$5,000	$3,894	$8,894	15.4	461.76	62,417	(2,583)	($2,583)
1984	71,000	6,000	2,583	8,583	12.9	521.36	71,142	142	142
1985	77,000	6,000	0	6,000	8.0	563.03	78,326	1,326	1,184
1986	83,000	6,000	0	6,000	7.4	604.69	84,326	1,326	0
1987	90,000	7,000	0	7,000	8.0	653.30	90,867	867	(459)

NOTE: Cumulative net income for the period affected by whole building review decisions (1983 to 1987) is $1,078 rather than the $4,869 loss shown in Table 1.

$R^*_{p,i}$ is the adjusted projected year rent and $A_{p,i}$ is the amount of the adjustment to the Projected Year rent of unit i.

For the rent increases to exactly offset the revenue deficiency or surplus, it would be necessary that:

$$D_p = \sum_{i=1}^{U} A_{p,i} N_{A,i}. \qquad (8)$$

As equation (8) shows, the sum of the adjustments for all the individual units during the months in the Projected Year after the rent increase takes effect must equal the value of the revenue deficiency or surplus.

The total Projected Year adjustment could be apportioned to the units in many ways. If the monthly adjustment were to be equal for all units[11], the adjustment would equal the revenue deficiency or surplus, D_p, divided by the number of months in the Projected Year after the rent increase takes effect.

Hence,

$$A_{p,i} = D_p/N_A, \qquad i = 1,U \qquad (9)$$

where

$$N_A = \sum_{i=1}^{U} N_{A,i}.$$

Alternatively, if each unit is to pay (receive) an equal share of the revenue deficiency (surplus) in the Projected Year regardless of the length of the individual unit's lag, then:

$$A_{p,i} = (D_p/U)/N_{A,i}. \qquad i = 1,U \qquad (10)$$

Many other apportionment methods could also meet the criterion stated in equation (8). For example, the adjustment could be apportioned so as to equalize the total annual rental payments of different units. All methods are equivalent with regard to the correction of revenue deficiency or surplus and redistribution between the landlord and tenants. They differ only in the distributional effect on the tenants.

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[11] If units have the same base rent, then the total annual rental payments for a unit with an earlier anniversary date (beginning of the rental unit year earlier in the accounting period) will be greater than for a unit with a later anniversary date. If the monthly adjustments for all units are equal and take effect only after their respective effective rent increase dates, then the adjustment will accentuate the differences in total annual rental payments.

Although the adjusted permitted rent increase approach eliminates any revenue deficiency or surplus in the Projected Year, it has the disadvantage of accentuating the variation in rent increases from year to year. In a year in which the unadjusted permitted rent increase is greater than the previous year's increase, the adjustment factor makes the increase even greater, since there is a revenue deficiency. In a later year, when the unadjusted permitted increase is less than the prior year's increase, the adjustment factor reduces the permitted increase further. This effect can be illustrated by applying the adjustment formula to the example of revenue deficiency and surplus contained in Table 12. Table 14 compares the rent increases with and without the rent adjustment for revenue deficiencies and surpluses.

TABLE 15: Correction of Revenue Deficiency or Surplus by Adjusting Allowed Rent

	Without Adjustment[a]			With Adjustment[b]		
Year	Approved Rent	Increase Permitted	Net Income	Approved Rent	Increase Permitted	Net Income[c]
1981	$337.36	–	–	$337.36	–	–
1982	400.00	6.0%	($3,894)	400.00	6.0	($3,894)
1983	461.76	15.4	(2,583)	494.86	23.7	0
1984	503.43	9.0	(1,257)	491.52	-0.7	0
1985	553.83	10.0	(575)	571.28	16.2	0
1986	595.50	7.5	2	580.72	1.7	0
1987	644.11	8.2	(456)	662.47	14.1	0

[a] From Table 13.

[b] The calculation assumes there is no statutory minimum increase; hence, the allowed increase is determined by review each year.

[c] This and following tables assume the landlord is able to charge the permitted increases without incurring any revenue losses due to vacancies.

Table 15 assumes for convenience that both the allowable cost increase and the adjustment factor are apportioned so that the new allowed rents of all units are equal, although the effective dates of increase for the units differ; hence, the adjustment is apportioned in accordance with (9). The adjusted permitted rent is given by:

$$R^{*}_{p,i} = R_{2,i} + (C_p/N) + [\sum_{i=1}^{U} (R_{p,i} + R_{1,i} - 2R_{2,i})N_{B,i}]/N_A, \qquad (11)$$

where

$N_A = \sum_{i=1}^{U} N_{A,i}$ is the total number of unit months after the rent increase takes effect and

$$N = \sum_{i=1}^{U} (N_{A,i} + N_{B,i})$$

$$= \sum_{i=1}^{U} N_i.$$

The first term, $R_{2,i}$, is the prior period (Year 2) rent. The second term, C_p/N, represents the basic award. The final term is the term for revenue deficiency or surplus given in equation (6), divided by the number of months over which the adjustment is apportioned, N_A. Since the rent base is the same for all units in the example used for Table 15, equation (11) can be simplified by using the expression for D_p given by (2) rather than the one given by (6).

$$R^{*}_{p,i} = R_{2,i} + (Cp/N) + [\sum_{i=1}^{U} (R_p + R_1 - 2R_2)N_B]/N_A \qquad (11A)$$

It is evident from the example that the volatility of the rent increases is dramatically accentuated. Furthermore, if the landlord retains the option to take the statutory increase (currently 6 per cent), he could take the statutory increase in 1984, rather than the 0.7 per cent rent reduction shown in Table 15. As a consequence, he could realize a substantial positive net income in 1984 and in subsequent years, although the apparent intent of allowing financial loss is simply to enable the landlord to break even (before any adjustment for hardship allowance, which is considered in this commentary).

Surcharge on Rent. The cause of volatility in rent changes shown in Table 15 is that the adjustment factor added to the rents in the Projected Year carries into the next year. If the permitted rent increase in the Projected Year is greater than in either Year 2 or the year after the Projected Year, which is often the case when a rent increase is determined by a whole building review, then the adjustment to offset the revenue deficit in the Projected Year accentuates the revenue surplus in the following year. This can be avoided by removing the adjustment factor from the rent base at the end of the Projected Year.

It is therefore possible to make an exact correction of revenue deficiency or surplus by using the adjustment factor developed in the previous section as a surcharge that is removed for all units at the end of the Projected Year.[12] An adjustment would still have to be applied every year, however, since there will still be either a revenue deficiency or revenue surplus in every year that the rent increase does not happen to equal the increase in the previous year. The surcharge would have to satisfy equations (7) and (8) given above and, hence, could be defined by (9) or (10).

Applying the surcharge approach to the example in Table 13 gives the results shown in Table 16. It is assumed that the equal apportionment method given by (9) is used for determining the size of the surcharge, as was done in determining the adjusted permitted increases in Table 15.

If Table 16 is compared with earlier tables, it is apparent that rent increases are much more stable with the surcharge than with the adjusted permitted rent increase shown in Table 15. Furthermore, the basic permitted rent increases are approximately the same as when no correction was made for the revenue deficiencies and surplus, as was shown in Table 13. However, the total increase, including the surcharge, permitted at the beginning of each rental unit year is relatively large. Since the surcharge expires at the end of each accounting year, new surcharges are required annually, which raise each unit's combined rent increase in order to maintain the net income for the complex at the break-even point.

The surcharge method used in Table 16 has the virtue of simplicity. It accentuates the differences in total annual rental payments, however, because the units with rent increases occurring late in the accounting year also pay the surcharge for fewer months. Other approaches to surcharges may be more equitable in the way they distribute the burden among tenants, but they will have the disadvantage of either introducing the surcharge midway in a unit's rental unit year (that is, the rent would be increased more often than every twelve months), or using a more complex formula in order to calculate different surcharges for different units.

The calculation of the revenue deficiency or surplus given by (5) can

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[12] A revenue surplus can be corrected by a negative surcharge or interim rent reduction.

TABLE 16: Correction of Revenue Deficiency or Surplus by a Surcharge on Rent

Year	Approved Rent	Increase Permitted	Revenue Surplus (Deficiency)[a]	Basic Rental Revenue	Surcharge as % of Basic Rental Revenue	Monthly Surcharge on Rent[b]		Combined Increase Permitted[c]	Net Income
						Amount	Percentage		
1981	$377.36	–	–	–	–	–	–	–	–
1982	400.00	6.0%	–	$56,106	–	–	–	–	($3,894)
1983	461.76	15.4	($2,583)	62,417	4.1%	$33.11	7.2%	23.7%	0
1984	503.43	9.0	(1,257)	69,743	1.8	16.12	3.2	12.5	0
1985	545.10	8.2	(1,257)	75,744	1.65	16.12	3.0	11.5	0
1986	586.76	7.6	(1,257)	81,744	1.5	16.12	2.7	10.6	0
1987	635.37	8.3	(1,716)	88,285	1.9	22.00	3.5	12.0	0

[a] The revenue deficiency or surplus equals the total value of the surcharge on all units in the Projected Year.

[b] For each unit, the surcharge is collected only in the months commencing on the effective date of the unit's rent increase and terminating at the end of the Projected Year. As a result the surcharge as a percentage of the approved rent is larger than the surcharge as a percentage of the total basic rental revenue.

[c] The combined increase permitted represents the percentage increase in rent for the unit when the rent increase takes effect. Of course, rent payments for each unit are reduced at the end of the Projected Year for the balance of the rental unit year.

be modified to take into account the surcharge in order to generalize the effects of imposing a surcharge. For a surcharge with a value given by A_p as previously defined, the revenue deficiency or surplus in the projected year would be given by:[13]

$$D'_p = C_p - [(R_2 - R_1)N_B + (R_p + A_p - R_2)N_A]. \qquad (12)$$

If there were no surcharge in the following year, year p+1, the revenue deficiency or surplus would be:

$$D'_{p+1} = C_{p+1} - [(R_p - R_2)N_B + (R_{p+1} - [R_p + A_p])N_A] \qquad (13)$$

In (12) and (13) the first terms, C_p and C_{p+1}, represent the increase in allowable costs in the respective years. The second term of each equation (the term with N_B) is the difference between the current and previous year's rental revenue for the unit months before the effective dates of the rent increases. The third term of each equation (the term with N_A) is the difference between the current and previous year's rental revenue for the unit months after the effective dates of the rent increases.

The revenue deficiency or surplus in the year after the Projected Year is not eliminated unless the size of the increase in allowable costs in year p+1 happens to equal the Year 2 increase. Only in that case will A_pN_A be the correct adjustment for eliminating the revenue surplus in year p+1. The term A_pN_A is the only term that differs between the revenue deficiency or surplus as determined when there is a surcharge in the Projected Year (equation (13)) and when there is no surcharge in the Projected Year (equation (1) modified to represent D_{p+1}). As a consequence, a further surcharge denoted by A_{p+1} will normally be required in the following year. The surcharge in year p+1 would be added to R_{p+1}, starting with the effective date of the rent increase and continuing until the end of the accounting year.

It can be seen from equation (13) that the surcharge in the Projected Year serves to decrease the revenue surplus or accentuate the revenue deficiency in the following year since the term A_pN_A is positive for a positively valued surcharge. The surcharge reduces, from the Projected Year to the following year, the increase in rental revenue that would otherwise be realized. Consequently, the revenue surplus for 1984 shown in Table 13 is transformed into the 1984 revenue deficiency shown in Table 16. Annual surcharges are necessary to avoid a revenue deficiency that would reduce net income in the years after the initial whole building review.

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[13] Following the simplification of equation (11A), it is assumed for the remainder of the analysis that all units pay the same rent, although the effective dates for rent increases may differ. The equations therefore are extensions of (1) and (2), rather than (4), (5) and (6). This assumption simplifies the equations without making them less general.

Although the surcharge approach offsets the revenue deficiency or surplus resulting from the delayed rent increases and avoids the volatile rent increases found with the previous method of adjusting the permitted rent increases, a surcharge would be required in every year if the landlord were to increase his rental income every year by an amount equal to the increase in allowable costs. An approach that eliminated all future revenue deficiencies or surpluses with a single year's adjustment would offer obvious advantages.

Common Anniversary Date. If the rental years of all the units in a residential complex coincide with the complex's accounting year, then there can be no revenue deficiency or surplus since the term N_B in (6) equals zero. An apparently simple method for eliminating revenue deficiencies and surpluses would therefore be to make the anniversary date of all the units in the complex coincide with the beginning of the accounting year.[14] After the year in which the transition to common anniversary dates was completed, there could be no further revenue deficiencies or surpluses. The objective would be accomplished by a one-time adjustment, with special treatment needed only in the transition year. The method of transition, however, is very important if the purpose is to ensure that costs are fully passed through so as to avoid decreases or increases in the landlord's net income.

In order to introduce a common anniversary date, it would be necessary to either advance or defer the normal anniversary dates to the date chosen as the common anniversary date. Specifically, if a landlord who had applied to the Commission for a whole building review wished to introduce a common anniversary date that coincided with the beginning of his accounting year for his building, all rent increases for the Projected Year would have to be either advanced to the first day of the Projected Year or deferred to the first day of the following year.

If all rent increases took place on the first day of the Projected Year, then the elapsed time since the last rent increase for many units would be less than twelve months. If all increases were deferred to the first day of the following year in order to comply with section 124 of the 1979 Act, then the landlord would be forced to forgo all rent increases in the Projected Year. In the latter case, it would be impossible to eliminate the revenue deficiency or surplus for the Projected Year. However, the following year's rents could be set so as to ensure that there was no reduction in the landlord's net income that year or in later years. Some landlords might consider the long-term benefits of the conversion to a common anniversary date to outweigh the cost to them in the Projected Year.

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[14] There may be special circumstances in which the landlord could be required to change the accounting year. For example, if the first effective increase is after the beginning of the accounting year.

In the discussion below it is assumed that an exception to section 124 is permitted for the introduction of common anniversary dates because only then can this method be compared to the adjusted approved rent increase and surcharge methods of eliminating revenue deficiency and surplus. For comparability, the revenue deficiency or surplus must be eliminated for the Projected Year as well as the following years.

If the normal increase were imposed for all units at the beginning of the accounting year, the landlord's revenue deficiency would be transformed into a revenue surplus. The rent increase would over-compensate the landlord for the increase in allowable costs. Consequently, a separate calculation would be needed for the rent in the transition year (the first year having common anniversary dates).

The approved rents could be adjusted either to eliminate any revenue deficiency or surplus or to ensure that the total rent paid for each unit during the transition year would be the same as if a common anniversary date had not been introduced.[15] The latter could be done by setting the rent for each unit equal to one-twelfth of what its total annual rental payments would have been during the Projected Year if a common anniversary date had not been introduced. Although each unit's monthly rental payments would be increased before its traditional anniversary date, payments in the latter part of the year would be reduced. Since the landlord's annual rental revenue is not adjusted to eliminate revenue deficiency or surplus, this approach is referred to below as the "unadjusted common anniversary date" approach. A later section of this analysis discusses the "adjusted common anniversary date" approach, in which the revenue deficiency or surplus in the transition year is eliminated.

The rent level for the transition year with the unadjusted common anniversary date approach would be:

$$\begin{aligned} R_p^c &= (R_2N_B+R_pN_A)/N \\ &= R_2+(R_p-R_2)(N_A/N) \qquad (14) \end{aligned}$$

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[15] This approach, as outlined below, basically follows a scheme outlined during the Inquiry's first-phase hearings by a witness for the Commission.

TABLE 17: Correction of Revenue Deficiency or Surplus on Conversion to a Common Anniversary Date

	Basic Rent (December)		Rent Increase		
Year	January Unit	December Unit	January Unit	December Unit	Net Income
1981	$377.36	$377.36	–	–	–
1982	400.00	400.00	6.0%	6.0%	($3,894)
1983	461.76	405.15	15.4	1.3	(2,583)
1984	506.15	444.10	9.6	9.6	(2,583)
1985	569.65	499.81	12.5	12.5	0
1986	614.04	538.76	7.8	7.8	0
1987	665.83	584.20	8.4	8.4	0

The determination of R_p^c ensures that tenants pay no more in the transition year than they would otherwise have paid. Of course, this method of converting to a common anniversary date does not eliminate the revenue deficiency or surplus that would have occurred in the transition year without conversion.

The unadjusted common anniversary date approach is illustrated in Table 17, which applies it to the example illustrated in Table 13. In Table 17 the basic rent and the percentage rent increase are shown for the "January Unit" and the "December Unit". The January Unit is the unit in the residential complex whose rental unit year began on January 1, before the transition to a common anniversary date. The December unit's rental unit year begins on December 1. This is done to show that the base rents for the different units are set at different levels, although the initial base rents were equal. This variation reflects the lower total annual rent paid by units with later effective dates before the introduction of common anniversary dates. Only the January and December units are shown because they have the highest and lowest rents. With the common anniversary date the tenants may be more aware that the units are being treated unequally. However, it is not less equitable for some units to have a lower rent than it is for some units to pay their rent later in the year. In later years, there may be strong pressure to equalize the rents.

As noted earlier, this approach does not correct the revenue deficiency in 1983, the year of transition but instead permanently reduces the landlord's net income by the amount of the revenue deficiency (or increases it permanently by the revenue surplus). In this example, the resulting financial loss is eliminated later since it is an allowable cost in 1985. If the revenue deficiency did not result in a financial loss, however, the reduced net income would be permanent. This is illustrated in Table 18, which modifies Table 17 by reducing costs by $5,000 in each year and leaving the rate of cost increase and the 1982 rent levels the same.

TABLE 18: Modified Common Anniversary Date—Example

	Basic Year-End Rent		Rent Increase			
	January Unit	December Unit	January Unit	December Unit	Adjusted Total Costs	Net Income
1981	$377.36	$377.36	—	—	—	—
1982	400.00	400.00	6.0%	6.0%	$55,000	$1,106
1983	434.72	402.89	8.7	0.7	60,000	308
1984	447.97	442.97	9.9	9.9	66,000	308
1985	521.22	483.06	9.0	9.0	72,000	308
1986	564.45	523.14	8.3	8.3	78,000	308
1987	614.90	569.90	8.9	8.9	85,000	308

A more formal approach shows that this effect is generalizable. Equation (1) can be rewritten to show the revenue deficiency or surplus in the Projected Year if an unadjusted common anniversary date is introduced:

$$D_p = (R_p-R_2)N-[(R_p^c-R_1)N_B+(R_p^c-R_2)N_A], \qquad (15)$$

where

R_p is the Projected Year rent (lagged) if a common anniversary date is not introduced and

R_p^c is the Projected Year rent (not lagged) if a common anniversary date is introduced.

It can be shown by substituting (14) into (15) that (15) and (1) are identical; hence, the revenue deficiency or surplus in the Projected Year is not eliminated as it was with the two previous methods of correction. This result can also be shown by comparing the expressions for the landlord's gross income with and without the transition to a common anniversary date.

In any year in which a landlord does not convert a residential complex to a common anniversary date, the total revenue for the complex in the Projected Year, T_p, is:

$$T_p = R_2N_B+R_pN_A. \qquad (16)$$

Since $R_p = R_2+(C_p/N)$, total revenue can be rewritten

as:

$$T_p = R_2N_B+[(R_2+(C_p/N)]N_A$$

$$= R_2N + C_p(N_A/N). \tag{17}$$

If the landlord converts to an unadjusted common anniversary date in that year (using (14) to determine the new rent), total revenue, T'_p, is:

$$T'_p = [R_2+(C_p/N)(N_A/N)]N$$

$$= R_2N + C_p(N_A/N). \tag{18}$$

Since (17) and (18) are identical, it is verified that total revenue in the transition year is the same, whether the landlord converts to an unadjusted common anniversary date or not.

If the transition had not been made, total revenue in the following year (year $p+1$) would have been:

$$T_{p+1} = R_pN_B + R_{p+1}\,N_A$$

$$= [(R_2 + (C_p/N)]N_B + [R_2 + (C_p+C_{p+1})/N]N_A$$

$$= R_2N + C_p + C_{p+1}\,(N_A/N). \tag{19}$$

If the landlord had made the transition to an unadjusted common anniversary date in the previous year, total rental revenue in that year would have been:

$$T'_{p+1} = [R_2+(C_p/N)\,(N_A/N) + (C_{p+1}/N)]N$$

$$= R_2N + C_p(N_A/N) + C_{p+1}. \tag{20}$$

Comparing the landlord's total rental income with and without the transition to an unadjusted common anniversary date gives:

$$T'_{p+1}-T_{p+1} = C_{p+1}\,(N_B/N)-C_p(N_B/N)$$

$$= (C_{p+1}-C_p)\,(N_B/N)$$

$$= (R_{p+1} + R_2-2R_p)N_B. \tag{21}$$

Looking further into the future, total revenue in year $p+n$ without a common anniversary date is:

$$T_{p+n} = R_2N + \left(\sum_{i=0}^{n-1} C_{p+i}\right) + C_{p+n}\,(N_A/N). \qquad (22)$$

With an unadjusted common anniversary date, total revenue in year p+n is:

$$T'_{p+n} = R_2N + C_p\,(N_A/N) + \sum_{i=1}^{n} C_{p+i}. \qquad (23)$$

Hence, the difference between total revenue with and without the introduction of an unadjusted common anniversary date is:

$$T'_{p+n} - T_{p+n} = (C_{p+n} - C_p)\,(N_B/N). \qquad (24)$$

Furthermore, net income in year p+n is $[(C_{p+n}-C_2)\,(N_B/N)]$ less than net income in Year 2, without the introduction of a common anniversary date. Therefore, if the landlord does not introduce a common anniversary date and costs are fully passed through, net income will be below the net income in any designated base year by an amount determined by the amount by which the increase in allowable costs in the later year exceeds the increase in allowable (24) costs in the base year and the extent of the lag in the rent increases. If the later year cost increase is less, net income will increase.

With an unadjusted common anniversary date, the net income in year p+n is below the net income in Year 2 by $(C_p-C_2)(N_B/N)$. If an unadjusted common anniversary date is introduced, the net income will be below the net income in any designated base year by an amount equal to the revenue deficiency in the transition year. If there is a revenue surplus in the transition year, net income in later years will be increased by the amount of the Projected Year's revenue surplus.

It can be seen, then, that the benefit to the landlord of introducing an unadjusted common anniversary date will depend on the timing of the transition. The benefit is greatest when common anniversary dates are introduced in a year with a minimal increase in allowable costs. As noted earlier, however, revenue surpluses will rarely do more than offset a previous revenue lag; therefore, few landlords could time the introduction of an unadjusted common anniversary date so as to increase their net income above the historic level.

If the intent of rent review is to permit rent increases that raise the total revenue by an amount that matches the increase in total costs, thereby preserving the landlord's net income, the unadjusted common anniversary date approach is not acceptable. What is needed is a means of offsetting the revenue deficiency or surplus in the transition year. The common anniversary

TABLE 19: Correction of Revenue Deficiency or Surplus by Conversion to a Common Anniversary Date with Rent Adjustment and Equalization

Year	Year-End Rent	Increase	Net Income
1981	$377.36	–	–
1982	400.00	6.0%	($3,894)
1983	451.39	12.8	0
1984	493.06	9.2	0
1985	534.72	8.4	0
1986	576.39	7.8	0
1987	625.00	8.4	0

NOTE: If the 1983 rent increase is forgone in order to comply with section 124 of the 1979 Act, then 1983 rent would be $400.00 instead of $451.39, the rent increase would be 0, and net income would be ($7,400.16). The 1984 rent increase would then be 23.3 per cent to raise rent to $493.06.

date will then ensure that income will not fluctuate from its level because of revenue deficiencies or surpluses in later years.

As was the case with the adjusted permitted rent increase and surcharge approaches, the adjusted common anniversary date approach requires a policy for apportioning the revenue deficiency or surplus among the units. In order to avoid further adjustments in subsequent years, the adjustment should be apportioned to the various units so that each pays the same total rent throughout the twelve months of the transition year. It is not necessary, however, for each rental unit in the complex to bear the same share of the adjustment factor. It could be apportioned equally, or unequally (so as to equalize the rents perhaps)—as long as each unit's share is spread equally across the twelve months of the transition year. The size of the total adjustment required for the residential complex equals the value of the revenue deficiency or surplus.

One possibility would be to combine the introduction of common anniversary dates with the necessary adjustment and then equalize the rents. The end result, if this approach were applied to the example in Table 13 is shown in Table 19.

Table 19 shows that the transition to common anniversary dates in 1983 eliminates all future revenue deficiencies and surpluses without the necessity of annual adjustments. Costs are simply passed through by the normal procedures.

Although it may appear that this approach does little more than increase the landlord's rental revenue by advancing the date of some of the rent increases, the approach can also be viewed as effectively equalizing the total annual rent for all units while eliminating any revenue deficiency or surplus.

TABLE 20: Illustration of the Arbitrary Effects of Equalization

	Unit #1	Unit #2
December 1983 rent	$400.00	$425.00
Anniversary date	February	November
Unequalized 1984 rent	$450.00	$475.00
Equalized 1984 rent	$467.50	$467.50
Unequalized total 1984 rent	$5,350.00	$5,200.00
Equalized total 1984 Rent	$5,592.50	$5,185.00

NOTES: 1. Equalization increases the difference between the total 1984 rent because the unit with nominally higher rent has an anniversary date later in the year so that the total rent is actually less.

2. Revenue deficiency is decreased since more of the rent increase is borne by the unit with an earlier anniversary date. The landlord's annual revenue increases from $10,550.00 to $10,727.50 because of equalization.

The unit with the latest rent increase naturally bears the greatest burden resulting from the introduction of an adjusted common anniversary date.

Although some units will be required to pay two rent increases within a short period, this method for introducing common anniversary dates can be considered equitable in that the total annual rent for similar units in a residential complex will be equal. Anyone who takes the position that it is equitable to retain the original differences in the total annual rent will prefer a different method of apportioning the allowable rental income among units. With a common anniversary date, however, differences among the annual rent for similar units will be much more obvious than they are now, when the increases occur at different times.

It should be noted that if rents are equalized for units that do not have common anniversary dates, the effect may not be equitable. The example in Table 20 demonstrates that it is possible for equalization to raise the annual rent for the unit that is paying more annual rent while lowering the annual rent for the unit that is paying less annual rent.

In Table 20, it is assumed that the landlord has applied for whole building review, is equalizing rents, and uses an accounting year that starts on January 1. Unit #2 has a higher base rent for Year 2 (December 1983 rent) but pays a lower total annual rent because its effective date is nine months after the effective date for unit #1. If rents are not equalized, unit #1 pays $150.00 more rent than unit #2 during the Projected Year (January to December 1984). If rents are equalized, unit #1 pays $407.50 more.

If the landlord's accounting year had begun between March and November, the result would be quite different. For example, if it began on June 1, the base rents (May rents) would be $450.00 for unit #1 and $425.00 for unit #2. With this accounting period, unit #2, rather than unit #1 is the low-priced unit. The equalized rents taking effect during the June 1984 to May 1985 period would be $482.50 (assuming the unequalized increase for unit #1 would be $50.00 in February 1985). For the accounting year from June 1984 to May 1985, unit #1 would pay $150.00 more total rent if rents were not equalized and $12.50 more if rents were equalized. Using the June to May accounting period, equalization does reduce the differential in total annual rent payments.

It is evident that the effect of equalization on specific units depends on the choice of accounting year. Only if common anniversary dates are introduced will equalization serve to equalize the total annual rent. Furthermore, if common anniversary dates are not introduced, equalization will, in some circumstances, raise rather than lower the differential in total annual rents.

Chapter 12

Tenants' Applications

Chapters 7 and 8 discussed whole building rent reviews that are initiated by landlords' applications for permission to increase rents by more than the statutory limit of 6 per cent. Applications may also be brought by tenants who wish to dispute an intended rent increase of 6 per cent or less or to obtain declarations that the rent being paid is higher than permitted and that rent rebates are to be paid.[1] Tenants' applications are made pursuant to subsections 127(1) and 129(2), both of which are subject to subsection 102(3), which directs the Commission to mediate.

In the year April 1, 1982, to March 31, 1983, there were 3,753 tenants' applications disputing rent increases or requesting rent rebates. During the year, 272 hearings were held on tenants' applications, and there were 1,412 mediated settlements. During the same period, 5,442 applications by landlords for whole building review were received and 4,952 whole building review hearings were completed, involving 127,739 units.[2] The statistics are given to show that tenants' applications, although not insignificant in number, affect far fewer rental units than landlords' applications.

12.1 Application for Rent Reduction

The language of the 1979 Act is unclear with regard to applications both for rent reductions and for rent rebates. The provisions affecting applications for rent reductions are found in sections 127 and 132:

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[1] The procedure to be followed on tenants' applications and on appeals from orders made on tenants' applications were not discussed during the hearings in the first phase of the Inquiry, and no special comment on these matters is required in this Report.

[2] Residential Tenancies Commission, Report to the Minister 1982-83 (Toronto, 1983, Tables 4 and 19).

> 127.-(1) A tenant who desires to dispute any intended rent increase for his rental unit may apply to the Commission for an order requiring the landlord to reduce the amount of the rent increase.
>
> (2) Subsection (1) does not apply to a rent increase that results in a rent not exceeding the maximum approved by the Commission for the applicable rental unit.
>
> (3) An application under this section shall be made not less than sixty days before the effective date of the intended rent increase.
>
> 132.-(1) Where an application is made by a tenant under section 127, in determining a rent increase for the rental unit, the Commission shall, except where there has been an application under section 126 (whole building rent review), consider only the following matters:
>
> 1. Variations, and the reasons therefor, in the rents being charged by the landlord for similar rental units within the residential complex.
> 2. Rents being charged by other landlords for similar rental units situate in similar residential complexes within the same geographical vicinity.
> 3. An improvement or deterioration shown to have occurred in the standard of maintenance and repair that affects the rental unit.
>
> (2) Where the Commission has made a determination on the application,
>
> (*a*) the Commission shall make an order setting the maximum rent that may be charged for the rental unit under review; and
>
> (*b*) the Commission may order the landlord or tenant to pay to the other any sum of money that is owed to the other by reason of the decision of the Commission setting the maximum rent for the rental unit.

Although an application under section 127 is for an order requiring the landlord to reduce the amount of an intended rent increase, subsection 132(2) talks of the Commission determining a rent increase and making an order "setting the maximum rent that may be charged for the rental unit under review." That is the converse of an order requiring the landlord to reduce the amount of an intended increase and could be interpreted as requiring him to justify the intended increase, even though it is for the statutory increase or less. The burden should be on the tenant to show that he is entitled to relief under one or other of the heads in subsection 131(1).

Section 127 is the subject of Rent Review Guideline No. RR-10, which notes that an application made under section 127 would be of practical significance only in two situations: if a tenant is given a Notice of Rent Increase of 6 per cent or less and wishes to dispute the increase, or if the landlord has given a Notice of Rent Increase of more than 6 per cent but the tenant "is not willing to accept an increase of 6%."[3] The comment in the Guideline is based on an interpretation of the Act to the effect that a Notice of Rent Increase of more than 6 per cent that is not followed by an application under section 126 is nevertheless regarded as an effective Notice of an increase of 6 per cent. This interpretation is based on section 133, but it is not readily apparent on the face of the statute. It is recommended elsewhere that section 133 be amended to convey the intended meaning more clearly. (See Recommendation 23.) Because the Commission can consider only the matters set out in items 1, 2, and 3 of subsection 132(1), in an application under section 127 the tenant cannot bring up any financial matters as he could if the hearing were a whole building review under section 126.

Section 127 is more notable for what it does not do for tenants than for what it does. This is brought out indirectly in Guideline No. RR-10, which draws attention to the possibility that a landlord may give a Notice of Rent Increase that the tenant believes is in breach of section 124 or 125. The Guideline suggests that in such a case the tenant should refuse to pay the intended increase or should pay and claim a rebate under section 129. This seems a slow, awkward, and rather risky way for the tenant to challenge the validity of the increase. This difficulty could be avoided by implementing Recommendation 2 so that a tenant could apply, before the increase took effect, for a declaratory order setting his rent.

12.2 Application for Rent Rebate and Declaration of Lawful Rent

The statutory authority for rent rebates is found in section 129, which reads:

> 129.-(1) No tenant is liable to pay any rent increase in excess of that permitted to be charged under this Part.
>
> (2) Where, on the application of a tenant, the Commission determines that the tenant has paid an amount of rent that is in excess of that permitted by this Part or any predecessor thereof or by *The Residential Premises Rent Review Act, 1975 (2nd Session)*, the Commission shall order that the landlord pay the excess to the tenant and shall declare the rent that may lawfully be charged.

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[3] If the Notice of Rent Increase is followed by an Application for Rent Review, then the tenants' application is superseded and not acted upon.

The marginal note to section 129 reads: "Tenant not liable to pay illegal rent increase". Subsection 129(1) speaks for itself and does not call for comment. Subsection 129(2) raises a number of questions that are not answered by the Act or dealt with in the Guideline. The first may be stated in general terms: for the benefit of what persons and against what landlord may an order be made for the payment of excess rent? More particularly, the questions are:

1. Can an order be made for payment to a person who is no longer a tenant?

2. Can an order be made against a person who is no longer the landlord for payment of excess rent paid to him while he was the landlord?

3. Can an order be made against a landlord to pay excess rent paid to a predecessor landlord?

Subsection 129(2) refers disjunctively to three successive legislative enactments under which rent is or was permitted to be charged, namely, "this Part", which is Part XI of the *Residential Tenancies Act*, R.S.O. 1980, c. 452; "any predecessor thereof", which was Part XI of the 1979 Act; and the 1975 Act. (The words "any predecessor thereof" were added by the *Revised Statutes Amendment Act, 1981*, after the 1979 Act had been superseded by the revised statute in 1980.) From this it can be argued that the relief afforded by the subsection should be available for the benefit of present and past tenants because the year in which a permitted rent could be calculated in order to determine whether excess rent had been paid might be any year since 1975, when rent regulation began. It would reasonably follow that it was intended that those tenants should be able to recover excess rent paid to present and former landlords.

The Act does not define "[the rent] permitted". In the context, the rent permitted would seem to be analogous to "rent that may lawfully be charged" or lawful rent. Lawful rent was discussed in Chapter 5, where it was defined as schedule rent. The position taken in this Report is that rent permitted to be charged in any year is the rent that would have been charged if calculated in the manner prescribed for calculating schedule rent.

The first part of subsection 129(2) deals with the payment or rebate of excess rent. The subsection continues by directing the Commission to "declare the rent that may lawfully be charged." Although an application for a rent rebate can be made for rent paid in the current rental unit year, it will usually be for rent paid in a previous rental unit year. The rent that may lawfully be charged, however, will be the rent for the current rental unit year. But as stated above, the rent "permitted" and the rent that "may lawfully be charged" should be calculated in the same way.

In order to fill any lacunae in the 1979 Act, the following recommendations are made with regard to orders under subsection 129(2) for payment of excess rent and declarations of rents that may lawfully be charged.

***Recommendation 51.* For the purposes of subsection 129(2) of the *Residential Tenancies Act*, the rent "permitted" to which reference is made in that subsection and the rent that may lawfully be charged, with regard to which a declaration may be made, should be calculated in the same manner prescribed for schedule rent in Chapter 5.**

***Recommendation 52.* A tenant or a former tenant should be able to recover from his present or former landlord excess rent that he has paid to that landlord.**

***Recommendation 53.* If a landlord has charged and received excess rent, he should be liable to repay the excess to the tenant who paid it. A landlord should not be liable to pay excess rent that a tenant paid to another landlord.**

***Recommendation 54.* Claims for payment of excess rent should be brought within a stipulated time after the alleged excess payment has been made. A limitation period of three years might be appropriate.**

12.3 Mediation

When an application is made under subsection 127(1) or 129(2), subsection 102(1) applies. It reads:

> 102.-(1) Where an application has been made to the Commission, other than an application under section 126 (whole building rent review), the Commission shall inquire into the matter and shall attempt, by whatever means it considers necessary, to assist the parties to the proceeding in settling the matter by agreement.

The marginal note reads "Commission to mediate". An official skilled in mediation has been engaged, and personnel in the regional and district offices are trained in the techniques of mediation. Although the Commission does not insist that mediation be attempted before it will proceed with a hearing on a tenant's application, it regards the practice highly and recommends it strongly.

The use made of mediation is shown in Tables 21 and 22. These tables were prepared for this Report from statistics provided in *Reports to the Minister* by the Residential Tenancy Commission for the years 1979-80 to 1982-83. The figures for the year 1983-84 were not available at the time this Report was written.

With regard to total applications in 1982-83, the caseload of 3,753 applications, comprising 1,279 rent reduction applications and 2,474 rent rebate applications received during the year was resolved as follows: 6.0 per

TABLE 21: Tenant-Initiated Applications, 1979-80 to 1982-83

Year	Applications		Hearings Completed		Mediated Settlement		Outstanding Applications at Year End[a]		Applications Withdrawn[b]
	Rent Reduction	Rent Rebate	Rent Reduction	Rent Rebate	Rent Reduction	Rent Rebate	Rent Reduction	Rent Rebate	
1979-80	563	430	37	62	140	160	133	102	359
1980-81	1,649	1,160	55	119	367	729	252	278	1,109
1981-82	1,468	1,585	46	138	407	796	331	359	976
1982-83	1,279	2,474	34	238	199	1,213	460	889	720

[a] The Residential Tenancy Commission does not separate the outstanding applications into the two categories listed. These figures were calculated by assuming that the applications withdrawn were in proportion to the total rent reduction and rent rebate applications received during the year. E.g., rent rebate applications as a percentage of total tenant applications in 1981-82 equal 3,053 ÷ 1,585 = 52%. By applying this proportion to the tenant applications outstanding at the end of 1981-82 (690), it was estimated that 359 rent rebate applications were carried forward to 1982-83.

[b] Applications withdrawn were determined as residuals.

SOURCE: Residential Tenancy Commission Annual Reports 1979-80 to 1982-83. For 1979-80, see pp. 16-17 and Tables 13 and 14. For 1980-81, see p. 8 and Tables 13 and 14. For 1981-82, see Table 18. For year 1982-83, see Table 19.

TABLE 22: Tenant-Initiated Applications as a Proportion of Total Applications, 1979-80 to 1982-83

	Applications		Hearings Completed		Mediated Settlement		Outstanding Applications at Year End[a]		
Year	Rent Reduction	Rent Rebate	Rent Reduction	Rent Rebate	Rent Reduction	Rent Rebate	Rent Reduction	Rent Rebate	Applications Withdrawn[b]
1979-80	57.0%	43.0%	3.7%	6.2%	14.1%	16.1%	13.4%	10.3%	36.1%
1980-81	58.7	41.3	2.0	4.2	13.1	26.0	9.0	6.3	39.4
1981-82	48.0	52.0	1.5	4.5	13.3	26.1	10.8	11.8	32.0
1982-83	34.0	66.0	1.0	6.3	5.3	32.3	12.3	23.7	19.1

a See footnote *a* to Table 21.
b See footnote *b* to Table 21.
SOURCE: See source to Table 21.

cent were completed by hearings, presumably resulting in an order by the Commission, and 39 per cent by mediated settlement; 23.6 per cent were carried forward to the following year; and 32 per cent were "withdrawn". The number of applications shown to be withdrawn in the tables prepared for this Report is merely a balancing figure and is not reported separately by the Commission. Consequently, it is not known whether the tenants in those cases simply dropped their claims or were able to settle with their landlords without further engaging the attention of the Commission. As well, some tenants' applications in the "withdrawn" category were withdrawn because the landlord applied for a whole building rent review hearing.

It is the evident intent of subsection 127(1), read with section 132, and of subsection 129(2) that a successful application by a tenant for a rent decrease, a rent rebate, or a declaration of lawful rent will culminate in an order by the Commission. That is in keeping with the scheme of rent review as laid out in Part XI of the 1979 Act. There is no provision in Part XI for a landlord and a tenant to negotiate and agree on what the tenant's rent shall be or what increases the landlord can impose.

Subsection 102(1) is found in Part IX of the 1979 Act headed "Procedure" and applies to applications made under any provision of the Act except for a whole building review under section 126. It cannot be disputed that subsection 102(1) applies to applications under subsections 127(1) and 129(2), but the concept of settling rent matters by agreement is contrary to the scheme and operation of rent review. It may well be that the function of mediation was intended primarily to deal with landlord and tenant matters in the unproclaimed sections of the 1979 Act.

It may be asked whether mediation is a suitable approach to tenants' problems when they involve rent. Questions such as whether the landlord has breached an obligation to keep the premises in a good state of repair or has interfered with the tenant's enjoyment of the premises are frequently as much a matter of feelings or opinion as of fact, and it is understandable that a resolution of those difficulties by mediation would be preferable to a hearing before a Commissioner. However, the determination of what rent a tenant should have paid in the past or should be paying now involves essentially matters of fact that could be resolved by a study of the relevant records. If mediation is useful for dealing with rent problems, particularly those arising under section 129 regarding alleged illegal rents, it is because the Act is deficient in not defining lawful rent and how it should be determined and because, without a rent registry, information on past rents is sometimes difficult to obtain.

There are other considerations that may have weighed with the legislature when it introduced negotiation into the rent review process. The essence of mediation is compromise, and although there may be differing opinions on the value of what each side gives up in order to reach an agreement, the fact remains that the landlord may make concessions that it would be difficult to force him to make. That is an advantage to tenants, and indeed a tenant may occasionally make a claim for a rent rebate or reduction simply because it is the only way he can make the landlord recognize the matters of real concern.

Notwithstanding the advantage tenants might gain from mediation, the tenants' advocate expressed unqualified opposition to mediation and submitted that subsection 102(1) should be repealed. A number of reasons were given. It was said that most tenants do not have the experience and financial resources of landlords and are not a match for landlords in a mediation encounter. Moreover, mediation unavoidably brings other matters into consideration when the only point at issue should be whether the intended rent increase is too high or whether there have been illegal rent increases. It was submitted that the landlord could offer concessions on matters that were relatively unimportant to him but that were important to the tenant for the enjoyment of the premises he occupied and might thereby induce the tenant to forgo his proper claim to a lower rent or to the recovery of excess rents.

The practical advantages of mediated settlements of rent questions are secondary to the legal problems involved in disposing of applications under subsections 127(1) and 129(2) other than by order of the Commission. Under rent regulation, rent pertains to the unit and the rent that can be charged for a unit is controlled or ordered, as the case may be. It follows that if a landlord and tenant agree in a mediated settlement that the tenant should pay a reduced rent, which might still exceed the schedule rent, the amount agreed upon cannot become the rent charged for the unit without an order by the Commission. If the parties present the agreement to the Commission, it can either make a rubber stamp order, not knowing whether the rent agreed upon is the rent that may lawfully be charged and hence risk becoming a party to an illegal rent, or it can conduct a hearing to determine whether the rent agreed upon is the rent that can lawfully be charged. The latter course would render the mediation process pointless.

Furthermore, where the landlord and tenant agree that the tenant has paid excess rent, the amount of the excess so determined would be the difference between what the tenant had paid and some lesser amount that the parties had settled on as the amount that the tenant should have paid. The lesser amount could not become the rent "permitted" for the unit solely on the basis of the agreement, and if the agreement were brought before the

Commission to be ratified in some manner, the same problems would arise as in the case of an agreed rent.

It is evident from the practices developed by the Commission that, in its opinion, a feasible rent regulation system can combine controlled and ordered rents with private agreements between landlords and tenants. Evidence given on behalf of the Commission drew attention to the considerable amount of rebated rents that tenants had received through mediation and emphasized the effectiveness with which mediation resolves disputes between landlord and tenant. The matters raised above, however, were not addressed. Questions such as the rental status of a unit occupied by a tenant who has obtained a mediated rent rebate or rent reduction remain unanswered. Moreover, although it was said in evidence that "the technique of mediation is to draw the parties together without making a decision for them" (Transcript, June 28, 1983, p. 129), the Commission is unavoidably a party to the outcome. The Commission's function in a tenants' application is to determine the rent reduction to which the tenant is entitled or the rebate that should be paid to him, and to do that requires the determination of the lawful rent. If a landlord and tenant come to an agreement without an application to the Commission and with no participation by the Commission whatever, the result is meaningless from the point of view of rent review. The Commission cannot, however, escape some responsibility for the legal merits of a mediated settlement of a tenant's application in which it participated, even if only through the presence of a mediator. The fact that a claim has been mediated implies that the tenant gets something less than he is legally entitled to or pays more than he should, although he may gain in some other way.

There is something to be said for resolving disputes in this manner, at least where the parties are on a more or less equal footing. Nevertheless, if the legislature intended its scheme of controlled rents to be combined with the negotiation of rents, the sections of the Act specifically authorizing the Commission to participate in a negotiation should have made that clear. The Commission finds such authority in the language of subsection 102(1), and if it were only a matter of the legal interpretation of the law the Commission might be correct. If, however, that is the law, it erodes the integrity of the system of controlled rents without clearly establishing the effect of the agreed settlements on the rent structure.

The position taken in this Report is that negotiated rent arrangements between landlord and tenant are incompatible with the scheme of controlled rents governing the rent that may be charged for rental units.

***Recommendation 55.* Subsection 102(2) of the *Residential Tenancies Act*, requiring mediation of applications to the Commission, should be amended to exclude applications to the Commission under Part XI of the 1979 Act.**

Chapter 13

Sanctions and Enforcement

The emasculation of the 1975 Act in the course of being revised and rewritten as the 1979 Act was a noteworthy change. The 1975 Act was regulatory in the full sense of the word. It prescribed what landlords could do and could not do by way of rent increases and provided for penal sanctions for breaches of the rules. Specifically, it was a penal offence under the 1975 Act for a landlord to contravene or attempt to contravene the provisions of the Act regarding the permitted statutory increase in the rent or the provisions prohibiting a rent increase within twelve months of the last increase; and it was an offence to collect more rent than the maximum amount chargeable under a rent review order. There were other offences, but the ones mentioned above went to the heart of rent regulation. Under the 1979 Act, those transgressions are no longer specifically identified as penal offences. Instead there is a general offence of knowingly failing to obey an order of the Commission, which is not found in the 1975 Act; and section 129, which also had no counterpart in the 1975 Act, was added to the 1979 Act.

> 129.-(1) No tenant is liable to pay any rent increase in excess of that permitted to be charged under this Part.
> (2) Where, on the application of a tenant, the Commission determines that the tenant has paid an amount of rent that is in excess of that permitted by this Part . . . or by *The Residential Premises Rent Review Act, 1975 (2nd Session)*, the Commission shall order that the landlord pay the excess to the tenant and shall declare the rent that may lawfully be charged.

Subsection 129(1) provides that a tenant is not liable to pay a rent increase greater than what is permitted. Although this provision may be somewhat redundant, it puts to rest any possible doubt. Subsection (2) provides that the tenant may apply to the Commission for a determination that he has in fact paid excess rent and for an order requiring the landlord to repay the excess and declaring the rent that may lawfully be charged. One might ask whether the subsection confers on the tenant a right that he would not have under the common law to recover rents for which he is not liable, at least against the current landlord. Like the first subsection, however, subsection (2) clarifies the tenant's position up to a point. Whether a current landlord can be ordered to repay excess rents charged by a predecessor landlord cannot be said to be conclusively settled.[1]

A consideration of the effectiveness of a tenant's application under section 129 as a sanction for non-observance of the regulatory provisions of the 1979 Act leads to an examination of subsection 102(1), which requires that an application under section 129 must be mediated. (See Chapter 12 for a discussion of mediation.) In the context of enforcement and sanctions, it should be noted that mediation almost as a matter of course entails compromise. Although the tenant who does apply under subsection 129(2) is not required to participate in the Commission's effort to settle the matter by agreement, section 102(1) weakens the effect that subsection 129(2) might otherwise have.

An administrative sanction such as subsection 129(2) has quite definite advantages over penal sanctions. It minimizes the delays and technicalities that are inherent in the legal processes by which penal sanctions are applied, and it can afford direct relief to the persons for whose benefit the regulations are designed. An administrative sanction must however take into account the characteristics of those persons. It can be said without offence that most tenants are not qualified or particularly inclined to engage in applications of the sort called for under subsection 129(2). For that reason, subsection 129(2) is a rather weak sanction from the viewpoint of tenants generally.

With regard to knowingly failing to obey an order of the Commission, the Commission has caused charges to be laid under this provision and has obtained convictions. The circumstances were that the landlord had charged rents above what had been permitted by a rent review order. The offence, as described in the 1975 Act, of collecting more than the maximum rent chargeable under an order of a Rent Review Officer, dealt explicitly with the action of the landlord. The sanction in the 1979 Act would be more effective if the offence were specifically described as it was in the 1975 Act, thereby leaving no doubt in the minds of the landlord and the tenant regarding the proscribed action.[2]

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[1] In the application by a tenant under section 129 for an order that the landlord shall refund excess rents paid, the Commissioner took the view that the present landlord was not responsible for repaying excess rents charged by the previous landlord. (Residential Tenancies Commission, *Summaries of Significant Decisions*, 1980, 1 RTC, p. 12).

Moreover, the offence of failing to obey an order does not reach those cases where a landlord has raised the rent within twelve months of the previous increase, has raised the rent without giving a Notice of Rent Increase, or has raised the rent above the statutory limit without permission from the Commission.

Another matter that is dealt with in the 1975 Act but not in the 1979 Act is the practice of tenants subletting and charging "key money" or more than the lawful rent. Such actions were specifically prohibited by the 1975 Act. This matter should be given attention, and the provisions of the 1975 Act should be contained in the 1979 Act.

It may be asked whether it should be a policy of rent regulation to attempt to enforce strict and universal compliance. It is obvious that there are many different kinds of landlords. The corporate owner of a large urban complex is in a world apart from the family or individual that owns a duplex. It cannot be assumed that they are equally well-informed of the rules or that they comply with rules to the same extent. It may also be that across the province compliance with the requirements of the law governing rent increases is honoured more in the breach than in the observance. That comment is based on impressions gained from evidence and submissions to the Inquiry and general newspaper reports and literature bearing on the subject. Often, however, failure to comply with the Act may not be deliberate but may be due to ignorance or may reflect a friendly and co-operative relationship between the landlord and the tenant. The policy may have been that the threat of an application by the tenant under subsection 129(2) would deter landlords sufficiently from disregarding the provisions of the Act. The same tolerance should not be extended to non-compliance with a rent review order. In that case the landlord has been permitted a rent increase, which, although restricted in a number of ways, is based on his own presentation of his justified increase.

Notwithstanding the foregoing reservations regarding enforcement of the law, the position taken in this Report is that the 1979 Act should specify that it is an offence to contravene sections 124 and 125 of the Act.

The Inquiry heard evidence on the responsibility of the Commission to investigate breaches of the Act and failures to obey orders of the Commission. It will be observed that, under the Act, investigation in the foregoing sense was not explicitly assigned to the Commission. The duties of the Commission are laid down in section 81, and the only item that can be regarded as relevant to investigation and enforcement is the first, which directs the Commission to administer the Act. However, this duty appears to be interpreted broadly by the Commission, and, late in 1982, the Commission adopted the policy of investigating or assisting in the investigation and prosecution of such matters as the failure to obey orders of the Commission (Transcript, July 27, 1983, p. 143). This policy is commended.

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[2] See Donald Lamont, *Residential Tenancies* 4th Ed. (Toronto: Carswell, 1983), 212: "If a higher rent has been charged than the landlord is legally entitled to receive there is no penalty section."

A matter that calls for attention is that, if to charge a rent higher than that permitted under a rent review order constitutes the offence of knowingly failing to obey an order of the Commission, it is an offence that necessarily is committed by landlords.[3] For that reason, an active and effective enforcement policy by the Commission may appear to show a bias against landlords. On the other hand, to shift the responsibility for enforcement of the Commission's orders to another arm of government would lead to delays and to a duplication of effort.

Recommendation 56. **The Commission should actively investigate cases of alleged failure to obey rent review orders of the Commission throughout the province and should lay prosecutions when the circumstances warrant. This operation should be performed by a separate branch of the Commission under the direction of an enforcement officer who has his own staff and who is responsible to the Board.**

Recommendation 57. **The *Residential Tenancies Act* should provide that it is an offence to increase the rent charged for a rental unit more often than once in a twelve-month period, to increase the rent charged for a unit by more than the statutory increase unless authorized to do so, to charge more than the maximum permitted rent under any order of the Commission and for a tenant to charge a sub-tenant more than the lawful rent for the unit or to charge "key money".**

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[3] In some circumstances it can be argued that the tenant who pays the illegal rent would also be a party to the offence.

Chapter 14

The $750 Exemption

When bill 20, which became the 1975 Act, was brought before the legislature, it specified that the Act would not apply to residential premises for which the rent before July 30, 1975, was $500 a month or more or to premises in a building of which no part was occupied as rented residential premises before the first day of January 1976. During the passage of the bill through the legislature, the first of the above exclusions, as they were called, was deleted but the second was retained.

When bill 163, which became the 1979 Act, was introduced in the legislature in 1978, it contained the same exclusions (or exemptions as they came to be called) that had been found in bill 20 in 1975. In 1979, however, both exemptions survived, but the limit for the monetary exemption was raised from $500 to $750.

The relevant provision in the 1979 Act is clause 134(1)(*e*):

> (*e*) a rental unit the monthly rental for which is $750 or more, if the Lieutenant Governor in Council has, by regulation made after the 31st day of December, 1979, exempted such premises from the provisions of this Part.

The Order in Council, Ontario Regulation 168/80, was promulgated in 1980 and reads, "Rental units, the monthly rent for which is $750 or more, are exempt from Part XI of the Act."

On introducing bill 163 on October 30, 1978, the Minister of Consumer and Commercial Relations told the legislature, "Luxury units renting for $500 a month or more will be exempted after the end of 1979." During the discussion of the bill in the General Standing Government Committee on

Legislation on June 13, 1979, $500 was criticized as being too low and a motion was made that it be raised to $750. Speaking to the motion, the Minister said:

> The purpose of the original figure of $500 was not an arbitrary decision. [The Minister may have been referring to bill 20 of 1975.] The figure of $500 as a top or a beginning of decontrol on a certain style of unit had been first used in Alberta, and used very successfully. The economic amount has steadily gone down, now it's $300 or $350. The $500 was also used very successfully in British Columbia. Granted, at the time $500 was put in here [in Ontario] was some time ago. It is my feeling that $750 is a bit too high. It doesn't really begin to get at [the problem] because it affects a very, very small minority. Granted, everything that I said a few moments ago about the lack of validity of any of the surveys I still maintain. But if I recall correctly, even over $500 was less than three per cent. I think I'm right on that . . . . I'd rather suspect . . . that at over $750 a month the amount of rental accommodation that would be affected by this (provision) because this only pertains to things built before January 1, 1976, or occupied before January 1, 1976 would be much less than even one per cent . . . . well there was a purpose in the $500, and the $750 I think is a bit too high. You're not enamoured of [it]. I accept the principle that there should be a top. (pp. G-1610-1-2)

The Minister's comments must be read in conjunction with the remark in his statement to the legislature that " . . . the rent review section of the legislation will be in effect until the end of 1980." That remark was based on a clause in bill 163 that read, "Part XI is repealed on the 31st of December 1980". However, that clause was deleted during the passage of the bill through the legislature and the Act as passed contained no sunset provision.

It would seem from that short history of the $750 exemption that rent regulation was regarded by the government as a temporary operation that would not apply to new construction and only to a constantly decreasing part of the pre-1976 rental stock. The repeated efforts to impose a monetary limit above which rent regulation would not apply indicated a policy of gradual deregulation as rents were pushed above the limit. This policy has had an effect only because the legislation was not terminated as originally intended.

There are two explanations for a monetary exemption from rent regulation. One is that rent regulation is a temporary measure that should be phased out. It would appear that this was the Minister's position in 1978. In his remarks quoted above he said " . . . the figure of $500 as a top or the beginning of decontrol of a certain style of unit has been first used in Alberta and used very successfully." If that is the purpose of a monetary limit, it is grossly inequitable in its present form in the 1979 Act. A tenant with a large family who needs extra space will pay a higher rent and hence will face earlier deregulation than a single tenant in a smaller unit who pays less rent but who, comparatively speaking, might be quite rich. If the policy of phased deregulation is maintained, there should be several different limits gauged to the type of rental unit and hence to the rent paid.

The other explanation is that tenants who can pay rents of $750 a month are living in luxury units and should be able to pay market rents. Therefore units renting for that amount and up should be unregulated. In considering that explanation, it should be kept in mind that units that would be phased out of rent regulation in 1984 by the application of the monetary limit were units that were given protection in 1979. Their physical characteristics have not changed except that they are four or five years older. If they were not luxury units then, it is difficult to see why they should be considered so now and no longer entitled to the protection of rent regulation. The fact that with the passage of time the rents for such units have exceeded an arbitrary amount is not a compelling reason for exempting those units from rent regulation.

It was inherent in the scheme of rent regulation as it was enacted in 1979 that regulated rents in the upper part of the protected range would gradually be deregulated. Because in 1979 the rents of the great majority of protected units ranged from $250 to $450 or $500 a month, the erosion of rent regulation was minimal at first. In fact, a rough estimate is that up to the present time no more than one per cent of the rents that came under rent control in 1979 have become deregulated. As time passes, however, the rate of deregulation will accelerate. The tenants and those who speak for them regard this development unfavourably and suggest that the exemption limit should be indexed so that year by year it would keep pace with increases in controlled rents.

Because indexing is a process of calculating incremental changes at regular intervals, there is no way that it can allow for the exceptional rent increases that occur when a complex goes to rent review. When that happens, the rent increase is almost always larger than the statutory increase, sometimes by more than 100 per cent. If the indexed monetary limit is related to the statutory increase, the result will be that some units will become deregulated simply because the complex went to rent review.

Another effect of rent review orders could be that a unit might be regulated in one year, become unregulated in the next year, and in some later year again be in the regulated range.

Apart from the possibility of complications such as those mentioned above, there is the problem of calculating the index itself. Whatever method might be adopted, indexing would not serve the purpose intended by its proponents unless it simply kept regulated units from being deregulated. The obvious way to do that is simply to modify the exemption so that units that are currently deemed to require the protection of rent regulation will not become exempt in the future.

***Recommendation 58.* The exemption from rent regulation of rental units for which the monthly rent is $750 or more (pursuant to clause 134(1)(*e*) of the *Residential Tenancies Act)* should be modified so as not to exempt units that are now subject to rent regulation.**

Chapter 15

Boarding Houses and Lodging Houses

It can truly be said that, with the law in its present state, the inhabitants of boarding houses and lodging houses are in limbo so far as rent regulation is concerned. Whatever efforts have been made on their behalf have been ineffective. Consider the present situation:

In 1975 when security of tenure for tenants was strengthened by the *Landlord and Tenant Act* of that year, boarders and lodgers were not included. In 1979 when *The Residential Tenancies Act, 1979* was passed as the intended successor to the *Landlord and Tenant Act*, a rental unit was defined to include a room in a boarding house or lodging house, although boarders and lodgers were not declared to be tenants. What this might have meant for boarders and lodgers is not known, because the landlord and tenant provisions of the 1979 Act were not declared in force.

In any event, the Commission has rejected the argument that, because the definition of a rental unit includes a room in a boarding house or a lodging house, an occupant of such a room necessarily becomes a tenant. In effect it has excluded boarders and lodgers from the application of the rent review provisions of the 1979 Act. Only those who are able to establish that they are in fact and law tenants under the arcane rules of common law are recognized.

Because the legal position of boarders and lodgers as residents of the establishments in which they live is uncertain, there is no basis on which steps could be recommended that might be taken to improve their position. Among tenants' advocates the prevailing opinion is that nothing useful can be done for boarders and lodgers until they have been accorded security of tenure comparable to that enjoyed by tenants.

Finally, it is not clear who those boarders and lodgers actually are for whom the legislature in 1979 may have intended to do something by way of rent regulation.

A study commissioned by the Inquiry[1] distinguished among six principal sorts of accommodation according to such characteristics as whether the room was shared or private, whether the facilities were shared or private, what kinds of services were provided, and whether the room was in an apartment building or a private house. Even if the characteristics that would qualify residential accommodation to be considered a rental unit were defined, there would be differences among the kinds of accommodation that would make it difficult to regulate the rents under the scheme of the 1979 Act. The following matters were mentioned in the Jaffary study.

1. The rent paid in a boarding house covers the cost of meals and sometimes other amenities that are not provided in a lodging house; however, that rent is not apportioned among the several services. Food costs fluctuate and do not lend themselves to regulation, and moreover the occupants do not all pay for the same services. To determine Year 2 and Projected Year costs for twelve-month periods would be much more difficult for boarding houses than for a residential tenancy.

2. Occupants of both establishments, but particularly lodging houses, remain in occupation for shorter periods than tenants do and neither give nor expect the same lengths of notice that are required for tenants. Their mobility is not in accord with the controlled procedures of annual rent reviews.

3. It is not unusual for the rent charged to be individually negotiated according to the occupant's ability to pay and not to pertain to the room that is occupied. This is contrary to the scheme of rent regulation under the Ontario legislation.

4. It was not suggested that there was a semblance of organization even among the occupants of the same boarding house or lodging house. Nor is there any general group or association of this class of citizen. Although organized bodies of boarders and lodgers are not a prerequisite to the regulation of rents in the establishments in which they live, the absence of such associations could be expected to make the rent review process much more difficult.

5. Rent regulation requires extensive record keeping if it is to operate satisfactorily, and many boarding houses and lodging houses are operated on a simple cash-in and cash-out basis that would be quite unsuited to rent

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[1] "Problems in the Regulation of Rents for Roomers and Boarders" by Karl D. Jaffary.

regulation purposes. This would be particularly so in the case of boarding houses.

The tenants' advocate was of the opinion that those impediments to the extension of rent regulation to boarding and lodging houses were not sufficient reason for continuing to withhold from boarders and lodgers whatever benefits would accrue to them under the 1979 Act. This was a sincerely held opinion, but it was not supported by a point-by-point response to the difficulties that have been noted or by evidence that the scheme of rent regulation under the Ontario legislation can be adapted to this kind of accommodation.

The position taken in this Report is that rent regulation under the 1979 Act is not suited to the particular circumstances of boarding houses and lodging houses. It is not recommended that the current policy of the Commission, which is to consider applications made to it under the 1979 Act only where it is established that a legally recognized landlord-tenant relationship exists, should be changed. If the government is of the opinion that boarders and lodgers should have some form of rent protection, three matters will require attention. First, boarding houses and lodging houses should be clearly defined so as to identify clearly the type of accommodation to which regulation should apply. Second, the position of boarders and lodgers under the landlord and tenant provisions of the law should be clarified. Third, there should be a study of the boarding and lodging house industry as a preliminary to devising a scheme of rent regulation that is suited to the special characteristics of that industry. At present there is a dearth of authoritative information and statistical data on which policies could be based.

Chapter 16

Tenants' Associations

Tenants' associations are a natural concomitant of the whole building rent review process under the 1979 Act, and they perform a valuable function in the operation of rent regulation. The question for the Inquiry is how such associations can best help to make the process more effective and expeditious.

The purpose of a rent review hearing is to examine the material submitted by the landlord regarding the costs of operating his residential complex during the current and preceding years, the revenue obtained from the operation, and the projected costs for the year ahead in order to determine whether a rent increase is justified, and if so, by how much. The hearing at which this material is considered by a Commissioner also affords the tenants an opportunity to be heard on a variety of other matters pertaining to the complex in which they live.

The primary responsibility for examining the landlord's records and projections lies with the Commissioner conducting the hearing, with such assistance as he may require from the Commission staff. The tenants, however, have an undoubted right to participate in the process, and it is here that a tenants' association can play a part.

It is no disrespect to tenants to say that most of them are not qualified by training, and do not have the time, to do the work of investigators, bookkeepers, accountants and advocates, all of which are necessary functions at one time or another during a rent review application. Moreover, the rent-setting process is not simple; in fact, it calls for a reasonable degree of expertise. The part a tenants' association can play is to find among the tenants those who have the time, inclination, and competence to represent the tenants' interests before and at a rent review hearing and, if necessary, to arrange for outside assistance and collect funds. An association also performs a valuable function in informing the tenants of the nature of the process in which they are taking part and telling them what they can expect from it. Moreover, by being brought together, the tenants may be stimulated to develop their ideas and assemble information that is relevant to the landlord's application and that might otherwise pass unnoticed. That activity takes place before the hearing. Following the hearing and the publication of the order, the association may bring the tenants together again to consider the merits of the order and to decide what more, if anything, they should do.

The form a tenants' association takes is not important, although there must be a structure of some sort. The evidence presented to the Inquiry showed that most tenants' associations are formed in response to a rent review application and that the association tends to fade when that stimulus is removed. Whether in some circumstances a tenants' association can play a larger part in the lives of the tenants and in their community is a matter that this Inquiry did not attempt to study. It would not be surprising to find that, in a complex where the inhabitants have a similar ethnic or cultural background, the range of interest of an association would go well beyond landlord and tenant matters. Where, however, the residents of the complex are varied economically and in other ways and the common interest is the relationship with the landlord, there would seem to be little reason for a formally organized structure designed to continue indefinitely. The point that was emphasized about tenants' organizations by witnesses who gave evidence to the Inquiry was that tenants who do join the association should have a sense of real participation in what the association is doing. The word "democracy" was used several times in the evidence.

This Report, while giving full recognition to the value of tenants' organizations in the context of rent regulation, does not make any suggestions as to how such associations should be organized or how they should conduct their affairs.

When considering the part a tenants' association can play in the review process, particularly at the hearing, it should be borne in mind that an association is not a separate entity that can be regarded as the agent of its members. Agency, as a legal concept, includes well-defined obligations on the part of the agent. As the Commission has pointed out, tenants' organizations, at least up to the present, have been too loosely organized and temporary to qualify as agents in a legal sense. Nevertheless, the tenants naturally want their interests to be properly represented and protected and, as mentioned earlier, many do not feel qualified to undertake that responsibility personally. That being so, provision should be made for a tenant to appoint one or more persons to act as representatives who will take part in the review process, including the hearing and any appeal hearing.

One of those representatives could very well be an officer of the association who could be identified as such, but who would appear at the Commission office or at a hearing as the representative of the tenant from whom he has received specific authorization. The tenant might wish to be represented by an experienced rent review consultant as well, and that too would be in order. In some cases many members of a tenants' association will authorize the same person or persons to represent them for the purposes of the landlord's application. The association itself would not, however, be a party to the proceedings in any formal sense.

Consideration must be given to the legal position and responsibility of tenants' representatives. The Commission has published Procedural Guideline No. P-14, entitled "Agency Authorization", and has prepared an "Agency Authorization" form, which is to be signed by a tenant who wishes to appoint a representative to appear on his behalf.

Recommendation 59. **The form of authorization given by a tenant to his representative at a rent review hearing as prescribed by the Commission should be revised by deleting the words "agent" or "agency" where they appear and inserting a clause to the following effect:**

> **You are authorized to make on my behalf any commitment you consider advisable regarding matters that are brought forward by the landlord in connection with his application for rent review dated**
>
> **______.**

The form should include a note to the tenant that he may delete that clause before signing the application.

The Guideline does not discuss the powers and responsibilities of a person who might be appointed a tenant's agent but deals rather with the distinction between a counsel and an agent. Reference is made in the Guideline to the *Statutory Powers Procedure Act,* which provides that a party to proceedings may at a hearing be represented by "counsel or an agent". By counsel is presumably meant a lawyer.

The Guideline distinguishes between a tenant's agent who is a lawyer and one who is not; in this Report the latter is referred to as a lay agent. The Guideline does not, however, say that a lawyer will have superior standing before the Commission or should be preferred to a lay agent, although the public might interpret the Guideline that way. There does not appear to be any particular reason for drawing the distinction. In this Report, the business of representing tenants will be considered without regard to the professional qualifications of the persons who engage in that work.

By making a distinction between the legal and the lay representative, the Commission implicitly draws attention to the fact that a lawyer engaged in litigation stands in the place of his client and gives and receives undertakings on behalf of the client. A lawyer appearing before an administrative tribunal may see himself in the same position, and that may be the understanding of the Commission. The relationship of a lay agent to his principal, however, will be determined by the terms on which the agent is engaged.

It may be asked whether a tenant's representative should make statements to the Commission that are binding on the tenant. Although the function of a representative is to facilitate the progress of a rent review application, that does not require him to make commitments on behalf of the tenant from whom he has received his authorization unless he is specifically directed to do so. If a lawyer who is engaged by a tenant wishes to assume that responsibility on behalf of his client, that is another matter. But the responsibility should not be imposed upon representatives.

A tenants' association is not analogous to a trade union that speaks with one voice through its official representatives on behalf of all of its members and by majority vote arrives at decisions binding on all. As they now operate, however, tenants' associations can do a great deal to persuade their members to agree to matters about which there should be no dispute. That by itself should help to expedite the process. But each tenant must be allowed the right to be heard personally, subject to any authorization he may have given to a representative.

It was submitted to the Inquiry that little would be gained if the spokesman for a tenants' association could not commit the members of the association to accept the landlord's figures. The position taken in this Report is that, having regard to the nature of tenants' organizations, that is not feasible. Nevertheless, it is reasonable to expect that the informed participation of the tenants' representatives should greatly facilitate the task of the Commissioner and thereby improve the operation of the system. The fact that a group of tenants have met in an organized way, have been given an opportunity to discuss the landlord's application, and have appointed a spokesman should have a beneficial influence on the way in which the tenants participate in the process.

Chapter 17

Rent Schedules and a Rent Registry

In his statement to the legislature on November 16, 1982, the Minister of Consumer and Commercial Relations said:

> [An] area of particular concern to me is the absence of a registry of rents. So long as no one can adequately track the rent changes from tenant to tenant, it is extremely difficult to determine whether the 6% limit on rent increases made by a landlord alone has been honoured.
>
> I would like the Commissioner to give early attention to steps that could be taken to permit the use of section 33 of the *Residential Tenancies Act*. This section provides for such a registry, but members may recall that it was not proclaimed as the enforcement provisions relating to it were affected by the decision of the Supreme Court of Canada on the validity of the Act.[1]

The Minister's remarks touched on two compelling reasons for setting up something in the nature of a rent registry or schedule. First, tenants consider it necessary to have a source of information regarding the rents that should be charged for the premises they are occupying or considering renting. Second, a rent registry would be a means of determining whether landlords were observing the regulated limits on rent increases. As rent regulation now functions under the 1979 Act, it is deficient in both those respects and, as a consequence, the integrity of the system is being eroded.

It is widely and confidently reported that the statutory and ordered limits on rent increases are not being observed and that tenants are paying large amounts of excess rents. Statistics regarding the residential tenancy market in Ontario are too sparse to test the weight of those reports, but in evidence presented to the Inquiry it was shown that at least some landlords have raised their rents by more than the statutory increase without the approval of the Commission. This situation is disturbing to tenants and to reputable landlords alike. It also raises the very serious question whether rent regulation is functioning in accordance with the legislative intent. If any regulatory system is to function properly, it is essential to have reasonably adequate and accurate information about its effect; it cannot be said that such information is available. A registry that would produce reliable and relevant statistics would be a most desirable adjunct to rent regulation.

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[1] *Legislature of Ontario Debates, 2nd Session, 32nd Parliament*. Official Report (Hansard) Hansard No. 144, Vol. 5, p. 5172.

The terms rent schedule and rent registry are often used interchangeably. In this Report rent schedule means a schedule that is prepared by the landlord and kept at the residential complex, and that contains information on the rents that can be charged for the units in the complex. A rent registry, on the other hand, is a comprehensive record, maintained by the Commission, of rental information about residential tenancy complexes at large.

17.1 Section 33 of the 1979 Act

A marginal note accompanying section 33 of the 1979 Act introduces the term "rent schedule."[2] Section 33 of the 1979 Act reads as follows:

> 33.-(1) Every landlord shall maintain and keep available, in the residential complex, for examination at reasonable hours, a schedule showing, for each rental unit located in the residential complex of which he is the landlord, the following information:
>
> (*a*) the number of bedrooms;
>
> (*b*) the current rent being charged for the unit;
>
> (*c*) those services and facilities, accommodations and things included in the current rent for which a separate charge is allocated by the landlord and the amount of each such charge;
>
> (*d*) the immediately preceding rent that was charged for the unit;
>
> (*e*) those services and facilities, accommodations and things included in the immediately preceding rent for which a separate charge was allocated by the landlord and the amount of each such charge; and

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[2] Section 33 was included in Part III of the 1979 Act under the subheading "Landlord's Obligations". As a result of the challenge in the courts to certain features of the 1979 Act, Part III was not proclaimed in force when Parts VIII to XI, which established the Commission and rent regulation, were proclaimed. The situation in that regard has not changed since that time.

> (*f*) the date of the last rent increase for the unit.
>
> (2) Where there is more than one rental unit in a residential complex, the landlord shall post up conspicuously and maintain posted a notice advising of the existence of the schedule and when and where it may be examined by persons having an interest in the matter.
>
> (3) Every landlord shall, at least once in every twelve month period, give to the Commission a copy of the schedule maintained by him under subsection (1).
>
> (4) The Commission shall keep the schedule received by it under subsection (3) in the region in which the residential complex is situate and shall make the schedule available for examination by any person having an interest in the matter.
>
> (5) Subsection (3) does not apply to rental units that are exempt from rent review under Part XI.
>
> (6) This section does not apply to a residential complex owned, operated or administered by or on behalf of the Government of Canada or Ontario or a municipality, including a regional, district or metropolitan municipality, or any agency thereof.
>
> (7) Where a rental unit in a residential complex, other than a complex referred to in sub-section (6), is subsidized public housing, the rent charged that is shown on the schedule shall be the total amount of the rent being received by the landlord for that unit.
>
> (8) Where, on the application of any person having an interest in the matter, the Commission determines that the landlord has breached an obligation imposed by this section, the Commission shall make an order requiring the landlord to comply with his obligation.

Section 33 was a new feature of landlord and tenant law in Ontario. The Minister suggested that an impediment to its implementation may have been the concluding subsection, which would be seen as conferring judicial authority on the Commission, something that, constitutionally, the provincial legislature could not do. There may have been other features of section 33, such as its applicability to all landlords whether or not their properties were subject to rent review, that rendered section 33 unacceptable. However, during the Inquiry section 33 was not objected to as being unworkable, although all its implications were not examined at length. Nevertheless, the position taken in this Report is that section 33 is unsatisfactory and that a better system can be devised.

17.2 Rent Schedules

There should be both a rent schedule for each residential complex containing rental units subject to rent regulation and a rent registry compiled by the Commission. In the rent schedule a tenant or prospective tenant should be able to find the maximum permitted rent for the unit that he rents or is thinking of renting. The obvious person to prepare the rent schedule and to keep it up to date is the landlord himself. If the landlord is a corporation or is an individual who does not live on the premises, the schedule should be in the custody of the resident superintendent or caretaker. The landlord or whoever has custody of the schedule should be required to produce relevant information from it on the request of a tenant or of anyone seeking to become a tenant. He should be required to produce, not the schedule in its entirety, but only the information pertaining to the unit or units in which the inquirer is interested. For each rental unit, a rent schedule should contain at least the four items of information discussed below.

The first item is the schedule rent, which is discussed in section 17.3 below.

The second item to be included in a rent schedule would be the effective date of the beginning of the current unit rental year.

The third item would be a list of the services, facilities, accommodations, and things for which a separate charge is allocated by the landlord and the amount of each.

The fourth item would state whether a whole building rent review application or decision was pending or whether a Notice of Rent Increase had been given and, if so, the amount of the rent increase applied for.

The ways in which a rent schedule as outlined above differs from the rent schedule for which provision was made in section 33 are discussed below.

17.2.1 Subsection 33(1)

This subsection required the landlord to keep the schedule available for examination. If it was meant that the whole document could be examined by an inquirer, this is not desirable. It should be sufficient that information is provided regarding the unit in which the inquirer is interested.

Section 33 did not deal with a matter that was given considerable attention during the Inquiry. The issue was whether rent information in the schedule should be confidential, to be revealed only to someone other than the tenant himself who had in one way or another established a *bona fide* interest in renting a unit. There was a feeling that in principle confidentiality might be desirable, but no workable method of making the information available to prospective tenants while maintaining confidentiality was put forward. It is not certain that confidentiality should be a feature of a rent schedule at all. After all, the prices of residential housing, including condominiums, are freely published and rents in complexes that have been the subject of whole building rent review are set out in the reasons for the decision of the Commissioner. Besides, the benefits of any regulatory system are enjoyed at the sacrifice of other values—in this case some degree of privacy. In order to maintain some confidentiality, however, the custodians of rent schedules could be encouraged not to make the information in the schedule available to every curious inquirer, and as noted above, prospective tenants or their representatives should not be shown the whole schedule. With these considerations in mind, the recommended scheme does not include features intended to limit access to the information in the rent schedules.

17.2.2 Clause 33(1)(b)

This clause required information regarding the current rent being charged for the unit. Current rent was not defined in section 33 and is not defined elsewhere in the 1979 Act. It was probably thought that a definition was not necessary: current rent was what the landlord charged and the tenant paid. A schedule based on current rents would serve a useful purpose in the context of a landlord-tenant relationship not subject to rent regulation. However, as an adjunct to rent regulation, it would do nothing to resolve the problem of past illegal rent increases, which is a matter of great concern to tenants. Nor would current rent by itself be of much use as a measure of the effect of rent regulation on rents since 1975.

17.2.3 Clause 33(1)(d)

For the reasons given above with regard to current rent, the immediately preceding rent would not be relevant information and the landlord should not be required to make it known to an incoming tenant.[3]

17.2.4 Subsection 33(2)

Section 33 offered no guidance as to who might be persons having an interest. The implication was that it would be a restricted category, but restrictions would tend to make the schedules less useful.

17.2.5 Subsections 33(3) and (4)

Schedules filed at twelve-month intervals would be misleading, and a rent schedule will serve its purpose only if it is current. As will become evident in the discussion that follows regarding a rent registry to be maintained by the Commission, the rent schedules would not be sent to the Commission.

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[3] See Chapter 5 "The Rent Base".

17.2.6 Subsection 33(8)

Subsection 8 contained the only sanction for enforcing compliance with section 33. A breach of the obligations imposed by the section was not made a statutory offence under section 123 of the 1979 Act. If, as appears from the Minister's statement, subsection (8) was *ultra vires* the provincial legislature, the sanction of prosecution would seem to be called for.

17.3 Schedule Rent

A control system must record some rent figure, but current rent would do nothing to solve the problem of irregular rent increases. Therefore, schedule rent is proposed as a figure that in most instances can readily be calculated. Schedule rent, which is a new phase in rent review terminology, denotes the rent to be shown by the landlord in the rent schedule for the complex. Schedule rent will reflect permissible rent increases since the introduction of rent regulation in 1975 or since the last order setting the rent for the unit. Such an order might have been an order made by a Rent Review Officer under the 1975 Act, a whole building rent review order under the 1979 Act, a rent correction order, or an order under subsection 127(1) or 129(2) of the 1979 Act. Schedule rent would be determined in one of the three following ways.

1. If the last rent increase or adjustment had been pursuant to a rent-setting order, the schedule rent would be the rent that the order had set for the unit.

2. If there had never been an order with respect to the unit under the 1975 or 1979 Act, the schedule rent would be the rent the landlord would be entitled to charge for the unit if he had raised the rent by the amount of the prevailing statutory increase each time the rent could be raised. In this case, by August 1984 the schedule rent would be approximately double the rent that was charged for the unit in July 1975 immediately before rent regulation began. The increase is calculated on the assumption that on the anniversary dates since July 29, 1975, the landlord would have charged the statutory increase initially at the rate of 8 per cent and since October 1977 at the rate of 6 per cent.

It can be expected that some rent records for 1975 have been lost or destroyed or perhaps were never kept in any orderly way, with the result that it would be impossible or excessively difficult to determine what the rents were in July 1975. There will also be cases where there has been a new landlord who never received the 1975 records, but usually the change in ownership would have been followed by a whole building rent review. In such cases the Commission should have discretion to accept the landlord's presentation of schedule rents if it is satisfied that the original records are not available. The desirability of determining schedule rents with as much accuracy as possible must be balanced against the importance of getting the system into operation. The emphasis should be on keeping the scheme as simple as possible.

3. If in some previous year an order or orders had been made by a Rent Review Officer or the Commission setting the rent for the unit, schedule rent would be the rent as set in the latest of such orders plus any subsequent statutory increase the landlord would have been entitled to charge.

If the schedule rent were less than the current rent, the rent payable by the tenant should be reduced to the schedule rent. Once the rent schedules have been brought into operation, no penalty should be imposed or refund ordered by the Commission, but tenants would have the right to pursue claims for repayment of excess rents.

It would bear repeating here that the operation of a rent regulation system must be monitored in some way and that a rent schedule prepared by the landlord and containing schedule rents will constitute a feasible method of doing so. If made obligatory, the calculation and publication of schedule rents will have a salutory effect.

If the schedule rent were less than the rent being charged, difficult problems would arise. Landlords who had charged irregular rent increases would be unwilling to reveal that fact. Some landlords who had deliberately charged such rent increases might neglect or refuse to prepare the schedules or would report schedule rents to match current rents. In other cases the tenants might have known that the increases were irregular and might nevertheless have paid them and the landlord might feel he should not be penalized. Whatever the reason for irregular rent increases, if it were a matter that concerned only the Commission and the landlords, the Commission might be well advised not to attempt punitive action on its own initiative provided the landlord established schedule rents to the Commission's satisfaction and reduced the current rents to that level.

However, irregular rent increases are a real and direct concern to tenants, and nothing should be done that would impair the right of tenants to recover monies to which landlords were not entitled. The interests to be balanced are, on the one hand, that of protecting the subsisting rights of tenants under the Act and, on the other hand, of establishing with all due dispatch a system of rent schedules that will serve to protect tenants against future excess rent payments.

It was submitted during the hearings of the Inquiry that landlords should be required to prepare rent schedules for all units, including those that are not subject to rent control. That is not recommended.

17.4 Rent Registry

A rent registry should be set up and maintained by the Commission. The registry should be compiled initially from Statements to be prepared by all landlords of living accommodations not exempt from the 1979 Act.[4] The Statements should contain the following information:

1. The address of the residential complex in which the rental units are situated.
2. The number, type (by number of bedrooms), and location (by suite number) of rental units in the complex that are subject to Part XI of the 1979 Act[5] and the schedule rents for those units.
3. The number, type, and location of the units in the complex that are not subject to Part XI of the 1979 Act and the reason for their being exempt.
4. With respect to rental units that are subject to Part XI of the 1979 Act, the services and facilities, accommodations, and things included in the rent for which a separate charge is allocated and the amount of each such charge.

The Statements should be filed on or before a date specified by legislation. Moreover, they should be accompanied by a declaration signed by the landlord or, if a corporation, by the president or secretary stating that it is the declarant's belief that the information contained in the Statement is true and complete. If landlords are provided with standard forms of Statements designed for computer use, the record-keeping problems can be kept under control.[6]

17.5 Function of the Commission

Any monitoring and recording system that may be designed as a feature of rent regulation must take into account that there is a dearth of accurate information on the magnitude and characteristics of the residential tenancy stock to which the system will be applied. Table 23 presents the best estimate that can be derived from the available data on the number of residential complexes and the number of rental units subject to rent control in Ontario. Table 23 also shows the number of residential tenancies that have been the subject of whole building reviews and the number of tenants' applications, each of which, of course, involved a landlord. From the table it can be seen that rent regulation has been applied directly to only a small fraction of the landlords and the residential tenancies in the province. It is impossible even to guess to what extent the great majority of landlords who have not directly been involved in rent review are complying with the requirements of rent regulation, but in any case, compliance has not been actively enforced. An important consideration to keep in mind is that a very large and diverse group of people will, for the first time, be required to comply with rent regulation by preparing schedules and filing Statements.

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[4] Section 4 of the 1979 Act lists the types of living accommodation that are exempt from the Act.

[5] Section 134 prescribes what rental units are exempt from Part XI.

[6] See Appendix F, which discusses the feasibility of computerizing the rent registry.

It is imperative that the regulatory system should be simple and hence understandable by people of varied backgrounds, and as far as possible it should be self-regulating. It should also be of such a nature that it can be brought into operation relatively quickly. The system of rent schedules and rent registry advanced in this Report attempts to satisfy those essential conditions. In the great majority of cases the schedules will be prepared by landlords with reference only to their own records, although some landlords will have lost their records or failed to maintain adequate ones. The registry calls for only one original document from landlords, namely, the Statement. Additional resources will be required by the Commission in order to establish the system. However, the operation thereafter should not impose a significant administrative burden. Considerable assistance with supervision can be expected from tenants and members of the public who call or write to ask for rent information or to report that landlords have not prepared the schedules, that the schedule is incomplete, and so on.

It was submitted by tenants' advocates that, in conjunction with maintaining a registry system, the Commission should play an active part in determining lawful rents, that is to say, schedule rents and in initiating proceedings to recover excess rents. For two reasons, it is not recommended that the Commission's responsibilities be extended to include these functions. First, it would require an enormous expansion of the Commission's facilities and personnel, given the large number of landlords and rental units subject to rent regulation. To calculate or check the calculation of lawful rents on that scale would be an prohibitively expensive task. As for recovery proceedings, the task of investigating every claim tenants might make would impose a strain on the Commission's resources that would severely impair its effective operation. Nevertheless, it is recognized that many tenants do not have the ability, financial or otherwise, to pursue their rights under section 129(2) of the 1979 Act. For that reason, the government should consider providing assistance to organizations that help tenants to recognize and assert their rights.

The second and more important reason is that the Commission is an administrative and regulatory organization with quasi-judicial powers. It

TABLE 23: Statistics for the Ontario Rental Market

Estimated total number of rental units, 1981	1,100,000
Estimated number of rental units subject to rent review, 1981	915,000
Estimated number of residential complexes subject to rent review, 1981	135,000
Number of whole building review applications, 1982-83	5,442
Number of units reviewed by whole building review, 1982-83	127,812
Number of applications for a rent rebate (under section 129), 1982-83	2,474

NOTE: The Commission's reporting year runs from April 1 to March 31.

SOURCES: Data on number of rental units derived from Ministry of Municipal Affairs and Housing, *Staff Report to the Commission of Inquiry into Residential Tenancies*, March, 1983, p. 15, Table 5; data on whole building reviews from Residential Tenancy Commission, *Report to the Minister, 1982-83*, p. 26, Table 1 and p. 56, Table 19.

cannot perform those functions effectively if it appears to be advancing the interests of one side of the landlord-tenant relationship at the expense of the other. If the Commission undertook to establish lawful rents and collect excess rents, it would unavoidably be cast in the role of an agent of the tenants and would come into conflict with landlords. Judging by the criticism of the Commission's decisions from both landlords and tenants, it can be said with some confidence that to date the Commission has been reasonably successful in maintaining the impartiality essential to the successful performance of its duties. It would be most unfortunate if the Commission were to lose that reputation. However, when a flagrant and deliberate case of overcharging amounting to contempt of the rent review process comes to light, the Commission should exercise its discretion to bring about a fair and equitable system of rent review.

Consequently, the responsibility of the Commission with respect to the rent schedules will be limited to disseminating information and enforcing compliance in response to complaints.

The responsibilities of the Commission in respect to the rent registry will be as follows:

1. To enter into the registry the information contained in the Statements filed by the landlords.
2. To enter into the registry relevant information about residential tenancies contained in the Commission's records of whole building review applications and tenant applications.

3. To bring the registry to the attention of landlords and induce them to comply.

4. To institute a means whereby tenants and the public can address inquiries to the Commission and be informed of the schedule rent of a particular unit. If the landlord has complied with the requirements of the registry system, information will be available from which to inform the inquirer whether or not the unit is subject to rent review. If it is, the Commission will compute the schedule rent as at the time of the inquiry. If there is no record of the unit in the registry, the Commission can obtain from the person inquiring the information regarding the complex in which the unit is located and take action to enforce compliance by the landlord. The Commission would also take steps to ensure compliance if the information appeared to be incomplete.

17.6 Enforcement

In the statement to the legislature quoted at the beginning of this chapter, the Minister stated that section 33 of the 1979 Act was not proclaimed in force because subsection 33(8) may be *ultra vires* the provincial legislature and hence invalid. Subsection 8 was in keeping with the scheme of the 1979 Act. The subsection would have transferred to the Commission certain powers that could only be exercised by the courts. However, landlords who do not prepare and maintain rent schedules and file statements can be dealt with effectively by prosecution.

Recommendation 60. **Landlords of living accommodations not exempt from the *Residential Tenancies Act* should be required to complete Statements containing the required information and file those Statements with the Commission.**

Recommendation 61. **The Commission should set up and maintain a rent registry containing the information provided in the statements and relevant information from orders made on whole building rent review applications and tenants' applications.**

Recommendation 62. **Landlords of rental units subject to Part XI of the *Residential Tenancies Act* should be required to prepare rent schedules showing the schedule rent for the units and to make that information available to current and prospective tenants.**

Recommendation 63. **The legislation should provide for penalties for non-compliance with the requirement to prepare rent schedules.**

Chapter 18

Integration of Landlord and Tenant Law with Rent Regulation

The Order in Council that constituted the Inquiry directed it to consider "the advisability of integrating the *Landlord and Tenant Act* with the provisions for rent review as was contemplated by the *Residential Tenancies Act*". In fact, the provisions of the *Landlord and Tenant Act* regarding residential tenancies were combined with the revised provisions for rent review in the 1979 Act. When bill 163, which became the 1979 Act, was introduced on October 30, 1978, the Minister of Consumer and Commercial Relations told the legislature:

> [This bill] . . . is simple, straightforward, and understandable without the help of a lawyer. It is a people statute, it is genuine layman's law . . . . The bill takes the residential aspects of the *Landlord and Tenant Act*, which has its origins in medieval law, as well as present common law, and without a single 'notwithstanding', combines the two elements, together with the revised rent review legislation, into a clear concise statute. (*Legislature of Ontario Debates, 2nd Session, 31st Parliament*. Official Report (Hansard) Hansard No. 104, Vol. 4, p. 4313)

The Act may be "a people statute . . . genuine layman's law", but it is not "simple, straightforward and understandable without the help of a lawyer." One suspects that the Minister was moved by something less than unbounded admiration for lawyers. Apart from a well-intentioned effort to hand the law back to the people, the main reason for an integrated Act seems to have been to bring the whole gamut of landlord and tenant law as it pertains to residential tenancies under the jurisdiction of the Commission. It will be argued below that there are no persuasive reasons for doing that.

Landlord and tenant law is essentially a matter of contract between two parties, although it is heavily overladen by statutory rules and controls. Disputes between the parties are best settled by civil processes, such as negotiation, mediation, arbitration, and in the last resort litigation. Possibly a lay organization with informal procedures is better able than the courts to handle the early stages of disputes, but an elaborate structure is not required for those purposes. When disputes can only be settled by litigation, the courts ought to be more effective than informal tribunals, although that is not always the case. Rent regulation, however, is an administrative process that requires an organization and procedures that are not well suited to the resolution of civil disputes between private parties.

It is not easy to understand how the proponents of bill 163 failed to foresee the widespread opposition to the transferral of jurisdiction over the substantive aspects of landlord and tenant law (as distinguished from rent review matters) from the courts to the Commission. When that policy was struck down, the government's response was to not declare in force the landlord and tenant provisions of the 1979 Act in their entirety. As a consequence, a number of changes that were contained in the 1979 Act and that the Minister confidently believed were improvements in landlord and tenant law were never made.

The ostensible reason for the attack by both landlords and tenants on the 1979 Act as passed by the legislature was their objection to moving "the whole field of residential landlord and tenant relations from the courts", as the Minister put it, to the Commission. The Inquiry was informed, however, that tenants in particular objected to a number of substantial changes in landlord and tenant law made by the 1979 Act and that both landlords and tenants were opposed to the "speedier, less expensive and more informal setting" (again quoting the Minister) in which the Commission would operate under the 1979 Act. The constitutional argument was used by both sides to attack objectionable provisions of the integrated Act.

Several changes in landlord and tenant law in the 1979 Act that the tenants considered to be undesirable were brought to the attention of the Inquiry. It is not, however, the task of the Inquiry to study landlord and tenant law, and this Report does not comment on the pros and cons of those matters. The avowed purpose of the litigation was to have the changes in landlord and tenant law reversed, and the effort was successful, not because of any opinions expressed by the courts with regard to the the merits of the changes, but because the government did not declare them in force.

The parts of the Act declared in force were Part VIII, which created the Residential Tenancy Commission; Part IX (with the exception of certain sections dealing with matters relating to its orders), which prescribed its mode of procedure; Part X, which provided for regulations and prescribed offences; and Part XI, which dealt with rent review. In their presentations to the Inquiry, both landlords and tenants voiced objections to various aspects of rent regulation as instituted by Part XI. For different reasons and to different degrees, both the landlords and the tenants argued that the Commission should not be the authority that administers the scheme and that anything the Commission might do could be done better by the judges of the County Courts. The Minister had declared the "overall objective" of the Commission to be "to provide straightforward, uncomplicated and informal methods". The critics alleged that in practice the Commission's proceedings are long-drawn-out and complicated and that its informal practices are contrary to natural justice. But boards, commissions, and tribunals of every sort are ubiquitous, and it is not surprising that the government decided to set up yet another commission with comprehensive judicial and administrative authority in yet another area of law and business. On this occasion it misjudged both the range of its constitutional authority and the public reception of its plans.

It is not for this Inquiry to express an opinion on whether the constitutional bar can be avoided or will be removed. Moreover, it is evident that the objections made by landlords and tenants to many features of landlord and tenant law in the 1979 Act and to the transferral of jurisdiction in that field to the Commission are deep-rooted and unless overborne by legislative fiat will entail prolonged study before they can be resolved. In the face of those obstacles it not feasible to maintain the course envisaged by the Minister in 1979.

The Supreme Court remarked in its judgement on the 1979 Act that the power over rent review conferred by the Act was separate and distinct from the judicial resolution of disputes between landlords and tenants.[1] By inference it was not unconstitutional to entrust the operation of a scheme of rent regulation to an administrative tribunal. The government responded by implementing only the provisions of the Act that established the Commission and conferred on it the responsibility for all aspects of the revised scheme of rent regulation. By so doing it introduced the policy of entrusting the administration of rent regulation in its entirety to a commission. But there were alternatives. Rent regulation could have continued as under the 1975 Act, whereby decisions on applications under the Act were made by specially appointed lay officials while policy and administration were in the hands of a government ministry. In the submissions to the Inquiry that the application of the Act should be entrusted to the courts, it was not stated whether the responsibility for policy and administration should in those circumstances be left with the Commission.

[1] Dixon, C.J., Reference re Residential Tenancies Act 123 DLR 3rd, 581.

The Commission's treatment of landlords and tenants under the present system of rent regulation is not so lacking in fairness and equity that the decision-making power should be turned over to the courts or the management and policy-making functions turned back to the government. On the contrary, there are good reasons for not making any changes. So far as the application of the scheme is concerned, the status of the Commission is well established. Tribunals, like the Ontario Securities Commission, that are composed mainly of non-lawyers are quite capable of comprehending and applying complex legislation. In fact, the complaints made against the Commissioners do not so much concern their personal abilities as the procedures they follow. Those procedures are permitted by the legislation and differ in important respects from the procedures followed in the courts, which counsel for the tenants regard as the model. However, there has been no objective evidence that overall the public has been treated any worse than if rent review had been handled in the courts. Of course, some of the criticism may be due to the fact that landlords and tenants are not prepared to accord to rental Commissioners the same respect that litigants show to judges.

The suggestion that the courts could take over the responsibility for hearing landlord and tenant rent applications must also be considered in light of the work involved. At present this engages the attention of some forty-five full-time Commissioners and twenty-five or more part-time commissioners together with a large support staff. It would be impossible for the present complement of county and district court judges and court officials to handle that added work. And the time needed to increase their numbers to the level required and to familiarize judges and officials alike with the complexities of the process would cause serious delays and be most disruptive to the process of rent regulation. Finally, as has been pointed out by the courts, rent regulation is essentially an administrative process, and the formalities of court procedures are not well adapted to dealing with administrative matters.

Recommendation 64. **The provisions of the *Residential Tenancies Act* having to do with the Residential Tenancy Commission and rent regulation should be assembled in a separate statute.**

Recommendation 65. **All aspects of the existing scheme of rent regulation should continue to be administered by the Residential Tenancy Commission.**

Recommendations

Chapter 2 — The Residential Tenancy Commission

1. There should be tenant and landlord representatives on the Board of Commissioners.

The majority of the Board members should be Commissioners; the representatives of the government and the special-interest members should not be Commissioners. The Board should be renamed Board of Management or Board of Directors.

2. The Commission should institute a procedure leading to declaratory orders in the exercise of its jurisdiction under subsection 84(2) to hear and determine matters and questions arising under the *Residential Tenancies Act*.

3. The advisory services rendered to the public by the Commission regarding landlord and tenant matters and rent regulation matters should be continued.

4. All Commissioners should receive a thorough initial training and continuing refresher training. Refresher training should be made obligatory for all Commissioners. Funding should be made available to the Commission for this purpose.

5. The undertaking required from Commissioners regarding appearances before the Commission after they retire should cover all proceedings under the *Residential Tenancies Act* and not merely rent review proceedings under Part XI. The undertaking should be extended to include attendances on

officials. The duration of the prescription need not be extended. The undertaking should be required from senior staff members as well as from Commissioners and should be required when new appointments are made to senior staff positions. The offices falling within the range of senior staff positions should be specified.

Chapter 3 — Regulations or Guidelines?

6. The policy of entrusting the Commission with the responsibility for formulating Guidelines to govern the interpretation and application of the *Residential Tenancies Act* should be continued, and Guidelines should not be replaced by regulations emanating from a ministry.

7. New Guidelines and material amendments to existing Guidelines should be circulated for comment to members of the public who have asked to be put on a mailing list and should be published by the *Ontario Gazette* before being promulgated by the Board of Commissioners. When material amendments are under consideration, the Board should convene a public meeting to hear oral submissions.

8. The *Interpretation Guidelines* should be declared to be authoritative, and the rules, directions, and interpretations they contain should be observed by the Commissioners. The Guidelines should be renamed Procedural Rules and Administrative Policies in lieu of Procedural and Rent Review Guidelines respectively.

9. Only in exceptional circumstances should a new Guideline or an amendment to a Guideline have retroactive application.

Chapter 4 — Scheme of Rent Regulation in Ontario

10. Section 128 of the *Residential Tenancies Act* should be amended to provide that the rent base for a unit that has not been rented for the previous twelve months or more and then becomes rented shall be deemed to have risen as though the landlord had rented the unit during that time and had given Notice or Notices of Rent Increase for the statutory increase.

11. Where a rental unit is rented for the first time since the inception of rent regulation, or where a new unit in a structural addition to a complex containing rental units subject to rent regulation is rented for the first time, the landlord should be allowed to charge market rent for such a unit the first time it is rented. The rent charged would be the schedule rent.

12. The rent base for a unit in a residential complex that has been wholly

or partially renovated should be set by reference to the capital cost of the renovations plus the rent base of any previously existing rental unit occupying the same space.

Chapter 5 — The Rent Base

13. The rent base to which a statutory or permitted rent increase is added should be schedule rent as defined in Chapter 17 of this Report.

14. Where the rent paid by a tenant is below schedule rent, the rent base for the unit occupied by the tenant should not be reduced.

15. Any increase in the rent payable by a continuing tenant who is paying less than schedule rent should be subject to the restraints imposed by sections 124 and 125 of the *Residential Tenancies Act*.

16. A written agreement between a landlord and tenant that calls for a temporary reduction in the rent paid by the tenant and a subsequent increase to the original rent level should not give rise to an infraction of sections 124 and 125 of the *Residential Tenancies Act*.

17. Where the rent paid by a former tenant has been less than the schedule rent, the rent payable by an incoming tenant may be increased to the schedule rent without giving rise to an infraction of sections 124 and 125 of the *Residential Tenancies Act*.

18. Subsection 134(3) of the *Residential Tenancies Act* should be repealed.

Chapter 6 — Rent Control

19. The maximum permitted rent increase that may be made without application for whole building rent review (the statutory increase) should be set annually in accordance with a fixed ratio established between the rate of increase in a cost inflation index relevant to landlords' costs and the rate of the statutory increase.

Chapter 7 — Whole Building Rent Review

20. A new form (Form 1A) should be prescribed for use when a Notice of Rent Increase in excess of the statutory increase is given.

21. Form 2, which is prescribed for use by a landlord when applying for whole building review, should be revised to conform to the scheme of the *Residential Tenancies Act*.

22. A Notice of Rent Increase and an Application for Rent Review that have been sufficiently given under subsection 99(1) of the *Residential Tenancies Act* should have their legal effect notwithstanding that they may not have come to the attention of the tenant to whom they are addressed.

23. Section 133 of the *Residential Tenancies Act* should be replaced by a provision to the following effect:

A Notice of Rent Increase of an amount greater than the limit imposed by section 125 of the *Residential Tenancies Act* shall be deemed as well to be a notice for an amount that section 125 permits a landlord to charge without an Application for Rent Review, and that amount may be charged and collected by the landlord until such time as an order by the Commission setting the maximum rent that may be charged for the rental unit takes effect.

The prescribed form of the Notice of Rent Increase should include a statement informing the tenants of the effect of section 133 as revised.

24. The Guide to the Cost Revenue Statement and the Cost Revenue Statement should be publications authorized by the Commission and directed to be used in rent review applications.

25. Fixed time limits should be set for the completion of the successive stages in the rent review and appeal process. The Commission should, however, have the discretion to waive the limits.

26. Every claim for a financial loss resulting from financing costs incurred in the purchase of the residential complex should be accompanied by a sworn declaration by the landlord that the transaction (or transactions) by which the complex was acquired were *bona fide* and that the price actually paid and the terms of payment were as shown by the documents presented to the Commission in support of the claim.

27. A transaction giving rise to a capital cost should be evidenced by an agreement in writing verified by a sworn declaration of the landlord that the cost was as stated in the agreement and was in his opinion reasonable.

28. It should be obligatory to include Year 1 costs in the Cost Revenue Statement, at least when there has been no change in ownership.

29. The following rules should be adopted for whole building rent review.

(a) All tenants should be given both Notices of Rent Increase and copies of the Application for Rent Review at the same time and at least ninety days before the first effective date of the rent increases applied for.

(b) The landlord should file with the Commission copies of the Notices of Rent Increase and the Application for Rent Review within fourteen days of the required date of the Notice and Application.

(c) As soon as the Commission has accepted the landlord's application, it should send notices of acceptance to the tenants and the landlord with information regarding the procedures that will follow.

(d) The Commission should have authority to impose terms when permitting an Application for Rent Review to be withdrawn under subsection 102(3).

(e) The Cost Revenue Statement should be prepared and filed not later than forty-five days before the date of the first effective rent increase applied for. At the same time the landlord should file with the Commission the vouchers, invoices, and receipts that substantiate his expenses incurred up to that time. It should be a requirement that expenditures of more than $50 must be supported by invoices, receipts, or vouchers.

(f) If the Cost Revenue Statement, duly completed and accompanied by vouchers, invoices, and receipts, is not filed at least forty-five days before the effective date of the first rent increase applied for, the Commissioner, when setting the date the rents may take effect under clause 131(5)(*a*) of the *Residential Tenancies Act*, should not set any effective date sooner than forty-five days after the date on which the Cost Revenue Statement and supporting documents were filed.

(g) A preliminary inquiry should be arranged at the discretion of the Commission when circumstances appear to warrant or when it is requested by any party to the hearing.

(h) The order of the Commissioner accompanied by his findings regarding cost increases should be issued within fifteen days of the hearing.

30. A Notice of Rent Increase sufficiently given under the *Residential Tenancies Act* should be deemed to be a notice sufficiently served for purposes of the *Landlord and Tenant Act* under subsection 129(1) of that Act.

Chapter 8 — Whole Building Rent Review Appeals

31. Funding should be made available without delay to enlarge the Commission as a necessary step in reducing delays in the appeal process.

32. The Board of Commissioners should be authorized in its discretion to direct that certain appeals should be heard by a single Commissioner.

33. The Commission should not be required to proceed with an appeal by a tenant or tenants from a whole building rent review order unless the appeal is authorized by a tenant from at least 20 per cent of the rental units occupied by rent-paying tenants, except in the special case where only one or a few tenants would be affected by the outcome.

34. The parties to every whole building rent review appeal should be the landlord and all the tenants.

35. The total rent increase for all the residential units in the complex, as it is finally determined on appeal, shall be apportioned amongst all the rental units in accordance with the applicable rules.

36. The following rules should be adopted for whole building rent review appeals.

(a) A landlord or the tenants who wish to dispute a rent review order should file a Notice or Notices of Appeal with the Commission within twenty days of the date of the order. Form 5 "Notice of Appeal" should be amended.

(b) A late filing should be accepted only in exceptional circumstances.

(c) The Notice should:

- (i) specify one or more findings or determinations made by the Commissioner in the rent review order and disputed by the party or parties taking the appeal; and
- (ii) state briefly the reason for the disagreement.

(d) If it appears that the reason for the appeal is simply to correct an error or errors in arithmetic, a single Appeal Commissioner should be authorized to make such corrections as are called for without holding a hearing.

(e) A Notice of Appeal should be acknowledged by a notice from the Commission informing the appellant or appellants:

- (i) that the appeal hearing will be limited to a review of those findings or determinations by the Commissioner specified in the Notice of Appeal;
- (ii) what the Commission's policy is on the introduction of evidence at the hearing;
- (iii) when and where the appeal will be heard.

(f) The notice from the Commission should be given to the landlord and all tenants. The date set for the hearing should be not later than thirty days after the date on which the Commission received the Notice of Appeal unless special and extraordinary circumstances require a longer period.

(g) The order of an appeal panel should be issued within twenty-one days of the date of the hearing.

37. The appellant or appellants in an appeal from a whole building rent review order should be required to carry the burden of proof to show that the Commissioner erred.

Chapter 9 — Calculation of the Rent Increase

38. In both Year 2 and the Projected Year, management and administrative overhead should be determined as a fixed percentage of the total of all other operating costs.

39. In the calculation of the increase in operating costs, losses due to vacant units and uncollectable rents should be included in costs of management and administration; hence, no separate allowance should be permitted for them.

40. When calculating a landlord's total capital expenditure, the Commission should include actual interest paid in financing a capital expenditure to the end of Year 2 or imputed interest at the current borrowing rate.

41. When calculating the allowance for a capital expenditure, whether financed by borrowing or by a landlord's own funds, the Commission should use an imputed interest rate based on a long-term borrowing rate.

42. Section 3 of the *Residential Complexes Financing Costs Restraint Act* should be kept in force.

43. Section 4 of the *Residential Complexes Financing Costs Restraint Act* should be allowed to expire.

44. Clause 131(1)(*c*) of the *Residential Tenancies Act* should be repealed.

Chapter 10 — Apportionment of Total Rent Increase

45. Section 5 of the *Residential Complexes Financing Costs Restraint Act* should be allowed to expire.

46. The differences due to equalization among rent increases for different

units should be limited to some dollar amount or percentage of the rent as may be specified by the Commission.

Chapter 11 – The Concept of Cost Pass-Through

47. The technique of base year rent review should be used in all whole building reviews for which the Commission receives applications after the policy change is announced. That is to say, in the case of a residential complex that had previously gone to whole building review, the Projected Year of the original review would be the base year for the subsequent whole building review, rather than Year 2.

48. When the base year review technique is applied, an annual allowance that adjusts the landlord's net income to offset the effects of inflation should be ordered in whole building rent review applications. The rate of increase in net income allowed should not be more than the statutory rate of increase under section 125 of the *Residential Tenancies Act* as amended in accordance with Recommendation 19.

49. Provision should be made in the *Residential Tenancies Act* for tenant-initiated rent correction hearings to be conducted by the Commission to review allegations regarding cost corrections, costs no longer borne, and the state of maintenance and repair of the complex, such hearings to be superseded at the landlord's option by whole building rent reviews. Tenant-initiated rent correction hearings should be authorized by a tenant from each of at least 50 per cent of the rental units occupied by rent-paying tenants.

50. Section 124 of the *Residential Tenancies Act* should be amended to permit a landlord, on one occasion only in order to establish a common anniversary date for the units in a residential complex, to give Notices of Rent Increase to take effect before the expiry of the twelve-month period following the previous rent increases. A common anniversary date should be established by an order of the Commission setting rent levels and the effective date of rent increases for all units in the residential complex.

Chapter 12 – Tenants' Applications

51. For the purposes of subsection 129(2) of the *Residential Tenancies Act*, the rent "permitted" to which reference is made in that subsection and the rent that may lawfully be charged, with regard to which a declaration may be made, should be calculated in the same manner prescribed for schedule rent in Chapter 5.

52. A tenant or a former tenant should be able to recover from his present or former landlord excess rent that he has paid to that landlord.

53. If a landlord has charged and received excess rent, he should be liable to repay the excess to the tenant who paid it. A landlord should not be liable to pay excess rent that a tenant paid to another landlord.

54. Claims for payment of excess rent should be brought within a stipulated time after the alleged excess payment has been made. A limitation period of three years might be appropriate.

55. Subsection 102(2) of the *Residential Tenancies Act*, requiring mediation of applications to the Commission, should be amended to exclude applications to the Commission under Part XI of the 1979 Act.

Chapter 13 – Sanctions and Enforcement

56. The Commission should actively investigate cases of alleged failure to obey rent review orders of the Commission throughout the province and should lay prosecutions when the circumstances warrant. This operation should be performed by a separate branch of the Commission under the direction of an enforcement officer who has his own staff and who is responsible to the Board.

57. The *Residential Tenancies Act* should provide that it is an offence to increase the rent charged for a rental unit more often than once in a twelve-month period, to increase the rent charged for a unit by more than the statutory increase unless authorized to do so, to charge more than the maximum permitted rent under any order of the Commission and for a tenant to charge a subtenant more than the lawful rent for the unit or to charge "key money".

Chapter 14 – The $750 Exemption

58. The exemption from rent regulation of rental units for which the monthly rent is $750 or more (pursuant to clause 134(1)(*e*) of the *Residential Tenancies Act*) should be modified so as not to exempt units that are now subject to rent regulation.

Chapter 16 – Tenants' Associations

59. The form of authorization given by a tenant to his representative at a rent review hearing as prescribed by the Commission should be revised by

deleting the words "agent" or "agency" where they appear and inserting a clause to the following effect:

> You are authorized to make on my behalf any commitment you consider advisable regarding matters that are brought forward by the landlord in connection with his application for rent review dated ______.

The form should include a note to the tenant that he may delete that clause before signing the application.

Chapter 17 — Rent Schedules and a Rent Registry

60. Landlords of living accommodations not exempt from the *Residential Tenancies Act* should be required to complete Statements containing the required information and file those Statements with the Commission.

61. The Commission should set up and maintain a rent registry containing the information provided in the Statements and relevant information from orders made on whole building rent review applications and tenants' applications.

62. Landlords of rental units subject to Part XI of the *Residential Tenancies Act* should be required to prepare rent schedules showing the schedule rent for the units and to make that information available to current and prospective tenants.

63. The legislation should provide for penalties for non-compliance with the requirement to prepare rent schedules.

Chapter 18 — Integration of Landlord and Tenant Law with Rent Regulation

64. The provisions of the *Residential Tenancies Act* having to do with the Residential Tenancy Commission and rent regulation should be assembled in a separate statute.

65. All aspects of the existing scheme of rent regulation should continue to be administered by the Residential Tenancy Commission.

Introduction et sommaire

Le gouvernement de l'Ontario a pour politique de réglementer les loyers et, d'une certaine façon, le système actuellement en usage remplit bien cette fonction. La Commission d'enquête avait pour mission, dans un premier temps, d'examiner en profondeur la théorie et la pratique de la réglementation des loyers en vertu de la législation en vigueur, et de recommander tout changement propre à améliorer ce système.

La réglementation des loyers remonte à 1975. On se souvient des conditions qui règnaient à l'époque. L'inflation était passée à un taux alarmant et les taux de vacance des locations résidentielles étaient très bas dans toutes les régions de la province, ce qui incitait à penser que les loyers allaient continuer leur ascension. Le public s'indignait contre les hausses de loyer pratiquées par des locateurs souvent qualifiés «d'affameurs». Tout ceci entraîna un programme de réglementation des loyers apparemment destiné à protéger les locataires contre de fortes augmentations de loyer.

La théorie était que si les augmentations de loyer étaient limitées, les locateurs ne pourraient pas imposer des hausses de loyer ne reflétant que la pénurie de l'offre. Le programme de réglementation des loyers fonctionne selon deux modes que, dans ce rapport, nous avons appelés respectivement la réglementation et la révision des loyers.

La contrôle des loyers reposait sur le principe que l'inflation allait nécessairement faire monter les coûts des locateurs et que, par conséquent, une certaine augmentation des loyers était inévitable. Le programme prévoyait donc une hausse de loyer jusqu'à concurrence d'un montant fixe pour laquelle il n'était pas nécessaire d'obtenir une permission. Cette augmentation est appelée dans ce rapport «l'augmentation statutaire».

Elle était à l'origine fixée à 8 pour cent par an mais en 1977 elle fut ramenée à 6 pour cent par an, taux qu'elle conserve à ce jour. Aux termes de la Loi de 1975[1] les locataires avaient le droit de contester une augmentation statutaire et un commissaire de révision des loyers pouvait ordonner une augmentation de loyer moins élevée conforme à l'augmentation effective des frais du locateur. Le droit de contester une augmentation statutaire sur la base des frais du locateur ne fut pas retenu dans la Loi de 1979[2].

On avait estimé en 1975 que l'augmentation statutaire suffirait à couvrir les effets de l'inflation sur les coûts du locateur; cependant en 1979 et 1980, lorsque l'inflation atteignit des nombres à deux chiffres, cela n'était plus le cas. La présente étude recommande donc que l'on établisse un rapport entre le taux d'inflation et l'augmentation statutaire. Le taux de l'augmentation statutaire serait révisé et rajusté annuellement afin de maintenir le rapport désigné entre ce taux et le taux d'inflation.

En ce qui concerne la révision des loyers, un locateur qui estime que l'augmentation statutaire est inférieure à l'accroissement de ses frais peut demander pour tout un immeuble l'approbation d'une augmentation de loyer supérieure à l'augmentation autorisée de façon à «faire passer» l'augmentation de ses frais. L'accroissement autorisé est le montant justifié par l'augmentation des frais d'exploitation et de financement, les dépenses d'immobilisations, plus tout montant nécessaire pour empêcher le locateur d'encourir des pertes financières.

L'une des grandes faiblesses du système de révision des loyers provient de la conjonction entre la période de deux ans dans laquelle s'inscrit la révision des loyers et la liberté du locateur de choisir la date de son appel. Le système de transmission des coûts, inhérent à la réglementation des loyers en Ontario, ne fait que comparer les coûts actuels et futurs pour deux années successives, les augmentations venant s'ajouter aux loyers durant la seconde année. Ces deux années sont isolées des autres périodes de demande de révision des loyers et, à moins que le locateur ne fasse des demandes annuelles successives de révision des loyers, il n'y a pas moyen de corriger les erreurs dans la projection des coûts ni de faire les rajustements dûs aux dépenses récupérées.

Le rapport recommande donc deux mesures correctives: une révision à partir d'une année de base et des audiences de rectification des loyers. En vertu de la première, lorsqu'un locateur soumet une nouvelle demande de révision des loyers la comparaison des coûts se ferait relativement à la période écoulée entre celle-ci et la révision originelle, même si la révision précédente a eu lieu plusieurs années auparavant. Les audiences de rectification des loyers se feraient à la demande du locataire et donneraient à la Commission[3] un moyen de corriger rapidement les erreurs dans les projections de coûts et de procéder aux rajustements des dépenses récupérées par le locateur si celui-ci ne sollicite pas une autre révision.

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[1] The *Residential Premises Rent Review Act, 1975 (2nd Session)*, S.O. 1975 (2nd Session), c. 12.

[2] The *Residential Tenancies Act*, R.S.O. 1980, c.452.

Le système de transmission des coûts qui en résulterait lierait plus étroitement les hausses de loyer aux hausses de prix. Cela étant, la position financière des locateurs resterait à peu près la même. Cependant les effets de l'inflation sur les revenus des locateurs ne doivent pas être oubliés; en conséquent nous recommendons un rajustement explicite pour l'inflation dans les augmentations de loyers ordonnées.

La seconde imperfection du programme de révision des loyers est que les années comptables durant lesquelles le locateur calcule ses coûts et ses hausses de loyer ne correspondent pas aux périodes de douze mois déterminant l'entrée en vigueur des augmentations de loyer. En conséquence les accroissements des frais du locateur durant son année comptable peuvent être supérieurs ou inférieurs aux augmentations des loyers perçues au cours de la même année. Ceci n'est satisfaisant ni pour les locateurs ni pour les locataires selon que les augmentations des frais sont supérieures ou inférieures aux augmentations des loyers. Le problème peut être résolu en donnant aux périodes de douze mois durant lesquelles les augmentations de loyers prennent effet une date anniversaire commune. Une autre solution consisterait à incorporer des surcharges dans les hausses de loyers autorisées. Cette formule est étudiée dans l'analyse technique figurant dans la section 11.3.2. La formule de la surcharge obligerait cependant à faire des demandes annuelles de révision des loyers pour des immeubles entiers; elle n'est donc pas recommandée en raison du fardeau que cela imposerait à tout le monde.

La Loi de 1979 contient une clause qui n'était pas dans la Loi de 1975 et qui permet à un locataire de présenter à la Commission une demande d'ordonnance obligeant le locateur à rembourser à celui-ci le loyer versé par le locataire en surplus du loyer autorisé par la loi. Le locataire peut également demander une ordonnance indiquant le montant de loyer exigible selon la loi. Cependant ni la Loi de 1979 ni aucun document publié par la Commission n'indique comment calculer le loyer autorisé ou légal. Le rapport recommande donc une nouvelle formule appelée «loyer prévu» à utiliser par la Commission pour fixer le loyer autorisé ou légal. Le loyer prévu est le loyer que le locateur toucherait s'il avait appliqué les hausses statutaires depuis l'introduction du programme de réglementation des loyers ou depuis la dernière ordonnance de la Commission fixant le loyer.

Le rapport diffère fondamentalement de la Commission dans son interprétation du mode de fonctionnement des Commissaires lorsqu'ils entendent et règlent les demandes de révision des loyers et les requêtes des locataires. La Commission estime que chaque Commissaire est libre d'interpréter et d'appliquer la Loi de 1979 comme bon lui semble. La position exprimée dans ce rapport est que la réglementation des loyers ne peut être juste envers tous les locateurs et tous les locataires que si elle est administrée uniformément et conformément aux règles de procédure et aux interprétations autorisées de la Loi. Le rapport recommande que les *«Interpretation Guidelines»* et le *Guide de l'état des revenus et dépenses* publiés par la Commission pour informer les Commissaires et le public fassent autorité. Le rapport ne recommande pas leur remplacement par des réglements. La Commission devrait être responsable de réviser ses directives et autres publications lorsque c'est nécessaire.

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[3] La Commission de location résidentielle.

Le rapport recommande également l'inclusion dans le Conseil de la Commission de membres du public représentant les intérêts des locateurs et des locataires et la convocation de réunions publiques pour entendre des représentations touchant le contenu du matériel qu'elle a publié.

On a beaucoup parlé, durant les audiences, des retards pris dans les demandes de révision de l'ensemble des loyers d'un immeuble. Le rapport recommande un plan d'action destiné à achever la procédure de révision de plus près possible du moment où les premières hausses de loyer entrent en vigueur. Des échéances fixes sont prescrites pour les différentes étapes de la révision des loyers et des audiences en appel et on insiste sur la nécessité d'observer ces limites.

En ce qui concerne le respect de la Loi, le Chapitre 13 du rapport recommande la restoration de certaines sanctions presentées dans la Loi de 1975 mais omises de la Loi de 1979, ainsi que l'adoption par la Commission d'une démarche positive pour faire respecter la Loi qu'elle a pour mission d'administrer.

L'enquête a été ordonnée par le Ministre pour étudier la question d'un registre des loyers. Le rapport indique qu'il est essentiel de disposer d'un moyen de contrôler les loyers de façon à juger dans quelle mesure les locateurs respectent la loi et de façon à corriger le tort fait aux locataires qui ne connaissent pas le montant des loyers exigibles. Le rapport recommande que les locateurs tiennent un barème de leurs loyers indiquant le montant maximum des loyers exigés pour les logements de leurs ensembles résidentiels et que la Commission tienne un registre complet de tous les loyers de la province. L'obligation d'établir ces barèmes et de tenir ce registre ne s'appliquerait qu'aux logements à loyer contrôlé. Le barème des loyers indiquerait le loyer prévu, dont on vient de parler, et les renseignements y contenus seraient à la disposition des locataires actuels et éventuels du logement.

L'enquête a aussi porté sur certains points ne touchant pas directement le processus de fixation des loyers. En ce qui concerne les associations de locataires la position exprimée dans ce rapport est que, en tant qu'organisations bénévoles non constituées en sociétés, elles ont une fonction utile dans le processus de révision des loyers et ne doivent pas être découragées. Elles ne sont cependant pas analogues à des syndicats et ne doivent pas jouer le rôle d'agents de certains locataires durant les audiences de révision des loyers. Le rapport ne fait aucune recommandation concernant la structure des organisations de locataires.

La situation des maisons de rapport et des pensions en vertu de la Loi de 1979 a également été étudiée dans le rapport. La position exprimée à ce sujet, qui s'appuie sur plusieurs raisons, est que le système de réglementation des loyers aux termes de la Loi n'est pas apte à fixer les loyers exigibles pour ce type de logement.

Le rapport commente aussi certaines clauses de la Loi intérimaire de 1982[4] qui doit être révoquée le 31 décembre 1984. Il recommande le maintien des clauses touchant la transmission des pertes financières résultant de l'achat d'un local résidentiel. Le rapport recommande également la suspension du système de répartition équitable d'un pourcentage de l'augmentation totale de loyer exigée à la suite de la révision des loyers de tout un immeuble, conformément à la Loi intérimaire de 1982, et son remplacement par la méthode dite «d'égalisation».

Le décret de Conseil chargeait les enquêteurs d'étudier l'état de la loi résultant de la décision des tribunaux de ne pas substituer la Commission aux tribunaux civils pour les questions touchant les locataires et les locateurs. Le rapport estime qu'il serait malavisé de poursuivre les efforts pour intégrer la loi sur les locateurs et les locataires avec la réglementation des loyers et il recommande que les clauses de la loi actuelle touchant la Commission et la réglementation des loyers soient insérées dans un statut séparé de réglementation des loyers.

Le rapport contient un certain nombre de recommandations qui ne sont pas spécifiquement mentionnées ici. Toutes les recommandations sont réunies dans une section suivant le Chapitre 18.

La Commission d'enquête a mené son étude de la réglementation des loyers en Ontario en vertu de la loi actuellement en vigueur sans examiner les autres solutions possibles ni les aspects plus vastes de la réglementation des loyers. La seconde partie de l'enquête portera sur ces questions, y compris les effets de la réglementation des loyers sur l'offre de logements abordables et les mesures que la Province de l'Ontario pourrait envisager en plus de la réglementation des loyers pour aider à fournir des logements acceptables à des prix équitables.

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[4] The *Residential Complexes Financing Costs Restraint Act*, S.O. 1982, c.59.

Recommandations

Chapitre 2 — La Commission de location résidentielle

1. Les locateurs et les locataires doivent être représentés au Conseil de la Commission.

Le Conseil doit être constitué en majorité de commissaires; les délégués du gouvernement et les représentants de groupes d'intérêts particuliers ne peuvent pas être commissaires. Le Conseil doit être désigné sous le nouveau nom de Conseil de gestion ou Conseil d'administration.

2. La Commission devrait instituer une procédure qui lui permette d'émettre des ordonnances déclaratoires dans l'exercice de ses compétences aux termes du paragraphe 84(2) pour entendre et juger les questions soulevées en vertu de la loi sur la location résidentielle.

3. Les services consultatifs rendus au public par la Commission relativement aux problèmes qui se posent entre locateurs et locataires et aux questions de réglementation des loyers doivent continuer à être offerts.

4. Tous les commissaires doivent recevoir une solide formation de départ et faire l'objet d'un recyclage régulier. Le recyclage devrait être obligatoire pour tous les commissaires et des fonds devraient être alloués à cette fin à la Commission.

5. L'engagement requis des commissaires touchant leur comparution devant la Commission après qu'ils ont cessé d'en faire partie doit couvrir toutes les activités de celle-ci en vertu de la loi sur la location résidentielle et pas seulement les activités de révision des loyers aux termes de la Partie IX. L'engagement doit être étendu aux services auprès des hauts fonction-

naires. La durée de la prescription n'a pas besoin d'être prolongée. L'engagement doit être exigé des principaux membres du personnel ainsi que des commissaires et est requis lorsque de nouvelles nominations sont faites à des postes importants.

Chapitre 3 — Réglementations ou directives?

6. Il faut continuer à charger la Commission de formuler des directives pour l'interprétation et l'application de la loi sur la location résidentielle et ces directives ne doivent pas être remplacées par des réglementations en provenance d'un ministère.

7. Les nouvelles directives et les amendements importants aux directives existantes doivent être soumis aux fins de commentaires aux membres du public qui ont demandé à figurer sur une liste d'envoi et doivent être publiées par la Gazette de l'Ontario avant d'être promulguées par le Conseil de la Commission. Lorsque des amendements importants sont à l'étude, le Conseil devrait convoquer une réunion publique pour entendre les soumissions orales.

8. Les *Interpretation Guidelines* doivent être déclarées impératives et les règles, instructions et interprétations qu'elles contiennent doivent être observées par les commissionaires. Les directives doivent dorénavant être désignées sous le nom de règles de procédure et politiques administratives au lieu de directives de procédure et directives sur la révision des loyers.

9. Une nouvelle directive ou un amendement à une directive existante ne peut avoir d'effet réotractif que dans des circonstances exceptionnelles.

Chapitre 4 — Système de réglementation des loyers en Ontario

10. L'article 128 de la loi sur la location résidentielle doit être amendé pour prévoir que le loyer de base d'un logement qui n'a pas été loué au cours des douze mois précédant sa location actuelle sera jugé avoir augmenté comme si le locateur avait loué le logement pendant ce temps et avait signifié un avis ou des avis d'augmentation de loyer tel que prévu par la loi.

11. Si un logement est loué pour la première fois depuis l'entrée en vigueur de la réglementation des loyers, ou si un nouveau logement qui fait partie d'un bâtiment ajouté à un ensemble de logements locatifs assujettis à la réglementation des loyers est loué pour la première fois, le locateur doit avoir la permission de demander le prix du marché pour ce logement la première fois qu'il est loué. Le loyer demandé servira à l'établissement du loyer prévu.

12. Le loyer de base d'un logement qui fait partie d'un ensemble

domiciliaire qui a été totalement ou partiellement rénové doit être établi à partir du coût des rénovations ajouté au loyer de base de tout logement occupant le même espace et précédemment loué.

Chapitre 5 — Le loyer de base

13. Le loyer de base auquel l'augmentation de loyer prévue par la loi est ajoutée devrait déterminer le loyer prévu tel que défini au chapitre 17 de ce rapport.

14. Lorsque le loyer payé par un locataire est inférieur au loyer prévu, le loyer de base du logement occupé par le locataire ne doit pas être réduit.

15. Toute augmentation de loyer payable par un locataire régulier qui paie un montant inférieur à celui du loyer prévu doit être assujettie aux restrictions imposées aux articles 124 et 125 de la loi sur la location résidentielle.

16. Un accord écrit entre un locateur et un locataire qui prévoit une réduction temporaire du loyer payé par le locataire suivie d'une augmentation pour revenir au niveau de loyer initial ne doit pas donner lieu à une infraction des articles 124 et 125 de la loi sur la location résidentielle.

17. Lorsque le loyer payé par un locataire précédent a été inférieur au montant du loyer prévu, le loyer payable par un nouveau locataire peut être augmenté jusqu'au montant du loyer prévu sans donner lieu à une infraction des articles 124 et 125 de la loi sur la location résidentielle.

18. Le paragraphe 134(3) de la loi sur la location résidentielle doit être abrogé.

Chapitre 6 — Contrôle des loyers

19. L'augmentation maximale de loyer permise sans qu'il soit nécessaire de faire une demande de révision de l'ensemble des loyers d'un immeuble (l'augmentation prévue par la loi) doit être fixée une fois par an suivant un rapport fixe établi entre le taux d'augmentation d'un index d'inflation des prix en rapport avec les frais des locateurs et le taux d'augmentation prévu par la loi.

Chapitre 7 — Révision de l'ensemble des loyers d'un immeuble

20. Il faut prescrire une nouvelle formule (Formule 1A) à utiliser lorsque l'avis d'augmentation de loyer dépasse l'augmentation prévue par la loi.

21. La Formule 2 qui doit être utilisée par le locateur qui fait une demande

de révision de l'ensemble des loyers d'un immeuble doit être modifiée pour se conformer aux dispositions de la loi sur la location résidentielle.

22. Un avis d'augmentation de loyer et une demande de révision de loyer signifiés conformément au paragraphe 99(1) de la loi sur la location résidentielle prennent effet légalement quand même ils auraient échappé à l'attention du locataire auquel ils sont destinés.

23. L'article 133 de la loi sur la location résidentielle doit être remplacé par une disposition à l'effet suivant:

> Un avis d'augmentation de loyer d'un montant supérieur à la limite imposée par l'article 125 de la loi sur la location résidentielle sera également considéré comme un avis touchant un montant requis par le locateur aux termes de l'article 125, sans demande de révision de loyer, et ce montant peut être demandé et perçu par le locateur jusqu'à ce que prenne effet une ordonnance de la Commission fixant le loyer maximal exigible pour le logement.

La formule prescrite de l'avis d'augmentation de loyer doit comprendre une indication informant les locataires des conséquences de l'article 133 tel qu'amendé.

24. Le Guide de l'état des revenus et dépenses et les Etats des revenus et dépenses doivent être des publications autorisées par la Commission et imposées par elle lors des demandes de révision des loyers.

25. Des échéances fixes doivent être fixées pour l'achèvement des étapes successives du processus de révision des loyers et de la procédure d'appel. La Commission doit cependant avoir le pouvoir de modifier ces limites.

26. Toute revendication de perte financière due aux frais de financement encourus lors de l'achat de l'ensemble domiciliaire doit être accompagnée d'une déclaration sous serment du locateur comme quoi la(les) transaction(s) d'acquisition de l'ensemble domiciliaire a(ont) été effectuée(s) de bonne foi et comme quoi le prix payé et les conditions de paiement sont bien tels qu'ils apparaissent dans les documents présentés à la Commission à l'appui de la revendication.

27. Il faut fournir la preuve de toutes les dépenses d'immobilisations encourues lors d'une transaction en présentant un accord écrit assorti d'une déclaration sous serment du locateur à l'effet que les frais encourus sont tels que décrits dans l'accord et sont à son avis raisonnables.

28. Il doit être obligatoire d'inclure les dépenses pour l'année 1 dans l'Etat des revenus et dépenses, au moins quand il n'y a pas eu de changement de propriétaire.

29. Les règles suivantes doivent être adoptées pour la révision de l'ensemble des loyers d'un immeuble.

(a) Tous les locataires doivent recevoir en même temps l'avis d'augmentation de loyer et une copie de la demande de révision des loyers au moins quatre-vingt-dix jours avant la première date d'effet de l'augmentation de loyer demandée.

(b) Le locateur doit déposer à la Commission une copie des avis d'augmentation de loyer et de la demande de révision de loyer dans les quatorze jours qui suivent la date requise pour les avis et la demande.

(c) Dès que la Commission a accepté la demande du locateur, elle doit envoyer des avis d'acceptation aux locataires et au locateur accompagnés de renseignements sur les procédures qui doivent s'ensuivre.

(d) La Commission doit avoir le pouvoir d'imposer des conditions lorsqu'elle permet qu'une demande de révision de loyer soit retirée aux termes du paragraphe 102(3).

(e) L'état des revenus et dépenses doit être préparé et déposé moins de quarante-cinq jours avant la date d'effet de la première augmentation demandée. Le locateur doit déposer en même temps à la Commission les reçus, factures et quittances qui justifient les dépenses encourues jusqu'à cette date. Il doit être obligatoire de fournir reçu, facture ou quittance à l'appui de toute dépense supérieure à 50 $.

(f) Si l'état des revenus et dépenses, dûment rempli et accompagné des reçus, factures et quittances, n'est pas déposé au moins quarante-cinq jours avant la date d'effet de la première augmentation de loyer demandée, le commissaire qui établit la date d'effet de l'augmentation du loyer aux termes de l'alinéa 131(5)(*a*) de la loi sur la location résidentielle ne doit pas fixer celle-ci moins de quarante-cinq jours après que l'état des revenus et dépenses et les documents à l'appui aient été déposés.

(g) Une enquête préliminaire devrait être décidée, à la discrétion de la Commission, lorsque les circonstances semblent le justifier ou lorsque l'une des parties à l'audience le demande.

(h) L'ordonnance du commissaire, accompagnée de ses conclusions touchant l'augmentation des coûts, doit être émise dans les quinze jours qui suivent l'audience.

30. Un avis d'augmentation de loyer signifié conformément à la loi sur la location résidentielle doit être considéré comme un avis signifié comme il se doit aux fins de la loi sur la location immobilière, au paragraphe 129(1) de ladite loi.

Chapitre 8 — Appel de la révision de l'ensemble des loyers d'un immeuble

31. Des fonds doivent être allouées pour augmenter le nombre des commissaires, mesure nécessaire si l'on veut diminuer les longueurs de la procédure d'appel.

32. Le Conseil de la Commission doit être autorisé à décider comme il l'entend que certains appels seront entendus par un seul commissaire.

33. La Commission ne doit pas être tenue d'entendre l'appel d'une ordonnance de révision de l'ensemble des loyers d'un immeuble interjeté par un ou plusieurs locataires, à moins que l'appel ne soit autorisé par les locataires d'au moins 20 pour cent des logements occupés par des locataires qui paient un loyer, sauf dans le cas spécial où seulement un ou quelques locataires seraient touchés par la décision.

34. Les parties à l'appel de toute révision de l'ensemble des loyers d'un immeuble doivent être le propriétaire et tous les locataires.

35. Le montant total des augmentations de tous les logements d'un immeuble tel qu'il est finalement déterminé lors de l'appel, sera réparti parmi tous les logements conformément aux règles applicables.

36. Les règles suivantes doivent être adoptées pour les appels de la révision de l'ensemble des loyers d'un immeuble.

(a) Le locateur ou les locataires qui désirent contester une ordonnance de révision des loyers doivent déposer un avis ou des avis d'appel auprès de la Commission dans les vingt jours de la date de l'ordonnance. La formule de l'avis d'appel doit être modifiée.

(b) Les dossiers en retard ne doivent être acceptés que dans des circonstances exceptionnelles.

(c) L'avis devrait:

- (i) spécifier l'une ou plusieurs des conclusions ou des décisions prises par le commissaire lors de l'ordonnance de révision des loyers et contestées par la partie ou les parties interjetant appel; et

(ii) énoncer brièvement les raisons du désaccord.

(d) S'il semble que la raison de l'appel est simplement la correction d'une ou de plusieurs erreurs de calcul, un seul commissaire d'appel doit être autorisé à faire les corrections voulues sans tenir audience.

(e) La Commission doit accuser réception de l'avis d'appel en informant l'appelant ou les appelants:

(i) que l'audience d'appel sera limitée à l'examen des conclusions ou des décisions du commissaire spécifiées dans l'avis d'appel;

(ii) de la politique de la Commission sur la présentation des preuves à l'audience;

(iii) de la date et du lieu où l'appel sera entendu.

(f) La notification de la Commission doit être remise au locateur et à tous les locataires. La date fixée pour l'audience ne doit pas dépasser les trente jours suivant la date à laquelle la Commission a reçu l'avis d'appel, à moins de circonstances spéciales et extraordinaires.

(g) L'ordonnance d'un comité d'appel doit être émise dans les vingt-et-un jours qui suivent la date de l'audience.

37. Le fardeau de la preuve établissant que le commissaire a fait erreur incombe à l'appelant ou aux appelants qui appellent de l'ordonnance de révision de l'ensemble des loyers d'un immeuble.

Chapitre 9 — Calcul de l'augmentation de loyer

38. Pendant l'année 2 et l'année prévisionnelle, les frais généraux de gestion et d'administration doivent être établis comme un pourcentage fixe du total de tous les frais d'exploitation.

39. Pour le calcul de l'augmentation des frais d'exploitation, les pertes dues aux logements vacants et aux créances irrévocables, doivent être incluses dans les frais de gestion et d'administration et ne doivent pas figurer séparément.

40. Pour calculer le total des dépenses d'immobilisations d'un locateur, la Commission doit inclure le montant d'intérêt réel payé pour financer les dépenses d'immobilisations jusqu'à la fin de l'année 2 ou l'intérêt payable au taux d'emprunt actuel.

41. Pour calculer une dépense d'immobilisation, qu'elle soit financée par un emprunt ou par les fonds personnels du locateur, la Commission doit avoir

recours à un taux d'intérêt basé sur le taux demandé pour les emprunts à long terme.

42. L'article 3 de la loi intérimaire de 1982 doit rester en vigueur.

43. L'article 4 de la loi intérimaire de 1982 doit être abrogé.

44. L'alinéa 131 (1) (*c*) de la loi sur la location résidentielle doit être abrogé.

Chapitre 10 — Répartition du total des augmentations de loyer

45. L'article 5 de la loi intérimaire de 1982 doit être abrogé.

46. Les différences dues à la répartition des augmentations de loyer entre les différents logements devraient se limiter à un montant en dollars ou à un pourcentage du loyer tel que spécifié par la Commission.

Chapitre 11 — Le concept de transmission des coûts

47. La technique de révision des loyers à partir de l'année de base doit être utilisée dans toutes les révisions de l'ensemble des loyers d'un immeuble pour lesquelles la Commission reçoit une demande après que le changement de politique ait été annoncé. Dans le cas d'un immeuble assujetti précédemment à une révision de l'ensemble des loyers, l'année prévisionnelle de la révision initiale sera ainsi l'année de base pour la révision suivante de l'ensemble des loyers, plutôt que l'année 2.

48. Lorsque la technique de révision à partir de l'année de base est appliquée, un ajustement annuel du revenu net du locateur doit être prévu dans toutes les demandes de révision de l'ensemble des loyers d'un immeuble. Le taux d'augmentation du revenu net permis ne devrait pas dépasser le taux d'augmentation prévu à l'article 125 de la loi sur la location résidentielle, tel qu'amendé conformément à la recommandation 19.

49. La loi sur la location résidentielle devrait prévoir des audiences de rectification des loyers qui seraient tenues à l'instigation des locataires par la Commission pour étudier les allégations touchant la correction du coût, les frais périmés et l'état général des lieux, ces audiences pouvant être remplacées, au gré du locateur, par une révision de l'ensemble des loyers de l'immeuble. Ce type d'audience devrait être autorisée par un locataire de chacun d'au moins 50 pour cent des logements occupés par des locataires qui paient un loyer.

50. L'article 124 de la loi sur la location résidentielle doit être amendé pour

permettre à un locateur, à une occasion seulement, d'établir une date anniversaire commune pour les différents logement d'un immeuble, à laquelle donner des avis d'augmentaton de loyer qui prennent effet avant l'expiration de la période de douze mois qui suit l'augmentation de loyer précédente. Cette date anniversaire commune doit être établie par une ordonnance de la Commission fixant les niveaux de loyer et la date d'effet des augmentations de loyer de tous les logements de l'immeuble.

Chapitre 12 — Demandes des locataires

51. Aux fins du paragraphe 129 (2) de la loi sur la location résidentielle, le loyer "permis" dont il est question dans ce paragraphe et le loyer qui peut être légalement exigé, au sujet duquel une déclaration peut être faite, doivent être calculés de la même manière que celle prescrite pour l'établissement du loyer prévu au chapitre 5.

52. Un locataire ou un ancien locataire doit pouvoir recouvrer de son locateur actuel ou passé l'excédent de loyer qu'il lui a versé.

53. Si un locateur a demandé et perçu un loyer excessif, il doit être tenu de rembourser l'excédent au locataire qui l'a payé. Un locateur ne doit pas être tenu de rembourser l'excédent de loyer qu'un locatire a payé à un autre locateur.

54. Il faut fixer une limite de temps au dépôt des plaintes touchant le paiement d'un loyer excessif. Une période de trois ans après ledit paiement semble appropriée.

55. Le paragraphe 102 (2) de la loi sur la location résidentielle qui requiert l'acceptation des demandes par la Commission doit être modifié pour exclure les demandes faites à la Commission aux termes de la Partie IX de la loi de 1979.

Chapitre 13 — Sanctions et exécutions

56. La Commission doit faire sérieusement enquête sur les cas de non-observation des ordonnances de révision des loyers de la Commission dans toute la province et intenter des poursuites lorsque les circonstances le justifient. Cette responsabilité doit être confiée à une section séparée de la Commission sous la direction d'un agent d'exécution doté de son propre personnel et responsable devant le Conseil.

57. La loi sur la location résidentielle doit stipuler que c'est commettre une infraction que d'augmenter le loyer d'un logement plus d'une fois tous les

douze mois, d'augmenter le loyer demandé pour un logement de plus du montant prévu par la loi à moins d'y être autorisé, d'exiger plus que le loyer maximal permis par une ordonnance de la Commission et, pour un locataire, d'exiger d'un sous-locataire plus que le loyer prévu par la loi ou de demander une reprise.

Chapitre 14 — Exemption des loyers à 750 $

58. L'exemption de la réglementation des loyers dont bénéficient les logements dont le loyer mensuel est égal ou supérieur à 750 $ (conformément à l'alinéa 134(1)(*e*) de la loi sur la location résidentielle) doit être modifiée de façon à ne pas exempter les logements qui sont actuellement assujettis à la réglementation.

Chapitre 16 — Associations de locataires

59. La formule d'autorisaton donnée par un locataire à son représentant lors d'une audience de révision des loyers, tel que prescrit par la Commission, doit être amendée, les mots "mandataire" ou "mandataires" supprimés là où ils apparaissent et une clause insérée indiquant ce qui suit:

> La présente vous autorise à prendre en mon nom tout engagement que vous jugez opportun touchant les questions soulevées par le locateur relativement à sa demande de révision des loyers en date de____________.

La formule doit comprendre une remarque adressée au locataire indiquant qu'il peut supprimer cette clause avant de signer sa demande.

Chapitre 17 — Barèmes de loyers et enregistrement des loyers

60. Les locateurs de logements habités qui ne sont pas exemptés des dispositions de la loi sur la location résidentielle devraient être tenus de remplir des déclarations contenant les renseignements requis et de les déposer auprès de la Commission.

61. La Commission devrait créer et tenir un registre des loyers contenant les renseignements fournis dans les déclarations et les données pertinentes en provenance des ordonnances émises à la suite des demandes de révision de l'ensemble des loyers d'un immeuble et des demandes des locataires.

62. Les locateurs de logement assujettis à la Partie XI de la loi sur la location résidentielle devraient être tenus de préparer des barèmes indiquant les loyers prévus et de faire en sorte que les locataires actuels et à venir aient accès à ces informations.

63. La loi devrait prévoir des pénalités pour la non-observation par le locateur de l'obligation où il se trouve de préparer des barèmes de loyer.

Chapitre 18 — Intégration de la loi sur la location immobilière et de la réglementation des loyers

64. Les dispositions de la loi sur la location résidentielle en rapport avec la Commission de location résidentielle et la réglementation des loyers doivent être réunies dans un texte législatif distinct.

65. Tous les aspects du système actuel de réglementation des loyers doivent continuer à être administrés par la Commission de location résidentielle.

Appendix A

Sections of the Residential Tenancies Act in Force

This Appendix lists the sections of the *Residential Tenancies Act* in force at the time of printing, along with the marginal notes, with minor adjustments for clarity, which describe each section.

Section	**Marginal Note**
1(1)	Interpretation
(2)	When a rental unit vacated
(3)	When a rental unit abandoned
2(1)	Application of Act
(2)	Conflict with other Acts
3	Act binds Crown
4	Exemptions from Act
Part V	Notice of Rent Increases
60(1)	Notice of rent increase
(2)	Increase void where no notice
(3)	Notice unnecessary for new tenant
(4)	Taxes and utility charges where unit not subject to rent review
(5)	Taxes deemed not to include local improvement charges
61(1)	Where tenant fails to give notice of termination
(2)	Deemed acceptance not to constitute waiver of tenant's rights

Section	**Marginal Note**
PART VIII	RESIDENTIAL TENANCY COMMISSION
70	Commission continued
71	Composition of Commission
72	Term of office
73(1)	Removal for cause
(2)	Inquiry
(3)	Order for removal
75(1)	Remuneration
(2)	Application of Superannuation Acts
76	Appeal Commissioners
77(1)	Board of Commissioners
(2)	Quorum
78(1)	Chief Tenancy Commissioner
(2)	Application for Superannuation Acts
80	Professional, technical and other assistance
81	Duties of Commission
82	Policy guidelines, etc. available to public
83	Immunity of Commission for acts done in good faith
84(1)	Exclusive jurisdiction of Commission
(2)	Commission may determine application of Act, etc.
(3)	No order where amount claimed by party over $3,000
(4)	Court jurisdiction
(5)	County or district court
(6)	Commission proceedings not ordinarily stayed
(7)	
(8)	
85(1)	Arbitration by Commission
(2)	Enforcement of decision
(3)	Non-application of Arbitrations Act
86	Minister may establish regions
87	Proceedings in region
88	Payment of Commission's expenses

Section	**Marginal Note**
89	Commission may charge fee for copies of documents, etc.
90	Audit of Commission's accounts
91(1)	Annual report
(2)	Further reports
(3)	Tabling of reports
PART IX	PROCEDURE
92	Commission to adopt expeditious procedures
93(1)	Decision to be on merits and justice
(2)	Commission to ascertain substance of transactions and activities, etc.
94	Commission to operate at convenient times
	MAKING OF APPLICATIONS AND GIVING OF NOTICES
95(1)	Who may make application
(2)	Representative actions
96(1)	Form of application
(2)	Where name of occupant not known
(3)	Where name of landlord not known
97	Extension of time for application or appeal
98(1)	Landlord must give copy of application to tenant, etc.
(2)	Tenant must give copy of application to landlord, etc.
(3)	Other application must give copy of application to landlords, etc.
(4)	Commission may give written directions
99(1)	Method of giving notice, etc.
(2)	Where notice given by mail
(3)	Commission may give written directions
(4)	Actual notice is sufficient
100	Parties to application
101	Changing parties; amending applications

Section	**Marginal Note**
	PROCEDURE OF COMMISSION
102(1)	Commission to mediate
(2)	Frivolous or vexatious applications, etc.
(3)	Withdrawing application
103(1)	Decision to hold hearing
(2)	Hearing to be before one Commissioner
(3)	Commissioner not disqualified by reason of mediating, etc.
104(1)	Issues may be heard together
(2)	Issues may be heard separately
105(1)	Application of Statutory Powers Procedure Act
(2)	Deemed compliance
106	Parties may examine material
107	Commission to question parties, etc.
108	Commission may investigate, etc.
109	Commission may consider all relevant information
110(1)	Making of order applied for
(2)	Making of other orders
(3)	Terms and Conditions
	MATTERS RELATED TO COMMISSION ORDERS
114(1)	Where tenant may deduce compensation from rent
(2)	Where compensation to landlord may be paid in instalments
(3)	Lump sum payments
115(1)	Enforcement of order for the payment of money
(2)	Variation of order
	APPEALS
117(1)	Appeal for order of Commissioner
(2)	Permission to appeal
(3)	Parties to appeal
(4)	Reasons to be given by Commissioner
(5)	Findings of fact considered true unless objection made
(6)	Limitation of evidence on appeal
(7)	Composition of appeal panel

Section	Marginal Note
(8)	Powers of appeal panel
(9)	Appeal panel may rehear appeal
(10)	Order of appeal panel deemed order of Commission
118(1)	Appeal to Divisional Court
(2)	Appeal to be by stated case
(3)	Commission entitled to be heard on appeal
(4)	Powers of Divisional Court
PART X	MISCELLANEOUS
120	Regulations
121	Substantial compliance with forms, etc., sufficient
122	Right to organize or participate in association
123(1)	Offences
(2)	Where corporation convicted
PART XI	RENT REVIEW
124	Only one rent increase per year
125	Maximum permitted rent increase without application
126(1)	Application by landlord
(2)	Whole building review
(3)	Reasons for and time of application
(4)	Filing of material
127(1)	Application by tenant
(2)	Exception
(3)	Time for application
128	Where vacant unit becomes rented
129(1)	Tenant not liable to pay illegal rent increase
(2)	Remedy
120	Commission may hear application under s. 126 although notice of rent increase not yet given
131(1)	Commission determination of total rent increase
(2)	Limitation on consideration of financing costs
(3)	Relief of hardship
(4)	Apportionment of total rent increase
(5)	Order setting maximum rent chargeable for each unit

Section	**Marginal Note**
132(1)	Considerations where tenant applies
(2)	Order setting maximum rent chargeable for the unit
133	Rent chargeable until order takes effect
134(1)	Exemptions
(2)	Subsidized public housing
(3)	Application of Part in economically depressed municipality
137	Notice of rent increase
138	Application of Part XI
139	Application to existing tenancies
140	Commencement
141	Short title

Appendix B

The Cost Revenue Statement

Residential
Tenancy
Commission

Residential Tenancies Act
Cost Revenue Statement

It is suggested that you initially read the entire Guide to the Cost Revenue Statement and refer to it while completing this Form.

All information to be printed or typed. Use a separate schedule if space is insufficient

Commission Date Stamp

Item 1. Name and full address of building or Residential Complex	Completion date of building	Acquisition date
Postal Code(s)		

Item 2. Name and mailing address of landlord(s) and agent(s)

Landlord(s)	Landlords Agent(s)
Business telephone / Postal Code	Business telephone / Postal Code

Item 3. Type(s) of building(s) in the residential complex	No of res units	No of buildings		Parking spaces (for rent)
☐ Apartment with elevator(s) ☐ without elevator(s)			Total Number of residential units	Indoor
☐ Duplex to sixplex, inclusive				
☐ Townhouse				Outdoor
☐ Single family dwelling			Total number of buildings	
☐ Mobile home site				Total
☐ Rooming house				
☐ Other (specify)				

Item 4. If mixed-use building or residential complex give gross areas (Complete only where commercial areas exist)				
	Building	Res sq ft	Comm sq ft	Total sq ft
	Parking	Res sq ft	Comm sq ft	Total sq ft

Item 5. Annual accounting period(s) relating to this application (see Guide Item 5)

Year 1		Year 2		Projected Year	
From	To	From	To	From	To

Item 6. Year 2 revenue

Year 2

a) Total potential unit basic rent revenue (excluding 'b' & 'c' below) . . . . $ ______

b) Add paid portion of rent of any units occupied by landlord or staff . . . . $ ______ } $ ______

c) Add unpaid portion of rental value of any units occupied by landlord and staff . . . . . . $ ______

d) Less rental value of vacant units . . . . $ ______

e) Total net unit basic rent revenue . . . . $ ______

Other revenue

f) Parking revenue — Include costs in Item 7 — $ ______

g) Revenue from other Separate Charges — Include costs in Item 7 — $ ______ } $ ______

h) Sundry Service revenue — Indicate if costs included in item 7 ☐ Yes ☐ No — $ ______

i) Total Revenue . . . . $ ______

Has an application for rent review for this residential complex been made before? ☐ Yes ☐ No

If yes, state date of last application . . . .

Date of this Statement	Application No (Commission use)

Now complete Cost Revenue Statement Schedule "A"

13011 (05/83)

b) Name of lender/lessor
Type of security given

Inception date day month year
Term expiry date day month year
Original amortization period

Method of repayment
☐ Blended principal and interest ☐ Other (Specify)

Frequency of payments
☐ Monthly ☐ Quarterly ☐ Other (specify)
Amount of each payment $

Principal amount at inception date $
Remaining principal oustanding at time of Acquisition $
Remaining principal outstanding at time of change of financing $

Reason(s) for change of financing

Effective date of change(s) in interest rate(s) or projected change(s) day month year
Previous rate %
Current rate %
Projected rate %

	Year 1 $	Year 2 $	Projected Year $	Increase Year 2 over Year 1 $	Increase Projected Year over Year 2 $
Interest payment					
Principal repayment					
Total					

c) Name of lender/lessor
Type of security given

Inception date day month year
Term expiry date day month year
Original amortization period

Method of repayment
☐ Blended principal and interest ☐ Other (Specify)

Frequency of payments
☐ Monthly ☐ Quarterly ☐ Other (specify)
Amount of each payment $

Principal amount at inception date $
Remaining principal oustanding at time of Acquisition $
Remaining principal outstanding at time of change of financing $

Reason(s) for change of financing

Effective date of change(s) in interest rate(s) or projected change(s) day month year
Previous rate %
Current rate %
Projected rate %

	Year 1 $	Year 2 $	Projected Year $	Increase Year 2 over Year 1 $	Increase Projected Year over Year 2 $
Interest payment					
Principal repayment					
Total					

DECLARATION

IN THE MATTER OF an application for rent review by ,landlord,
respecting the residential complex municipally known as

I, of the of
in the of
do solemnly declare that:

1. I am the applicant landlord in this matter.
2. The financial information in this Cost Revenue Statement and by any attachments is reported on a consistent basis for all accounting periods.
3. The financial information in this Cost Revenue Statement and any attachments is based on actual costs which I have verified as well as on projected costs which are accurate to the best of my knowledge and belief; other information is true and complete in all respects.
4. I hereby acknowledge that I have read the provisions of subsections 123(1)(b) and 123(2) of the Residential Tenancies Act and Section 122.1 of the Canadian Criminal Code.

AND I make this solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Declared before me at the)
of)
in the of)
this day of 19)

A Commissioner for Taking Oaths
or A Notary Public

Item 8. Capital Expenditures (See Guide Item 8)

Only residential capital expenditures in **Year 2** and/or Projected Year may be included.

Description of work or asset acquired	Source of Financing	Starting Date	Completion Date	Total* Cost $	Expected Life	Official Use Only

Financing Details (for Capital Expenditures)

This section should be completed when funds have been borrowed to finance any of the capital expenditures listed above. (Do not include these amounts in 7(i) or 9.)

Name of Lender	Amount Borrowed $	Date Borrowed	Interest rate %	Repayments		
				Term of Loan	Frequency of payments	Amount of each payment $

*If apportionment was required between residential and commercial area the method used should be explained.

Item 9: Financing Payments **This section must be completed**

If the property has been sold since Jan. 1. 1975, indicate:
Latest

Previous property transfer date(s)

Acquisition date ______________

Acquisition cost $______________

Transfer Date ______________

Transfer date ______________

a) Name of lender/lessor

Type of security given

Inception date day month year

Term expiry date day month year

Original amortization period

Method of repayment:
☐ Blended principal and interest ☐ Other (Specify)

Frequency of payments:
☐ Monthly ☐ Quarterly ☐ Other (specify)

Amount of each payment
$

Principal amount at inception date
$

Remaining principal oustanding at time of Acquisition $

Remaining principal outstanding at time of change of financing $

Reason(s) for change of financing

Effective date of change(s) in interest rate(s) day month year
or projected change(s)

Previous rate %

Current rate %

Projected rate %

	Year 1 $	Year 2 $	Projected Year $	Increase Year 2 over Year 1 $	Increase Projected Year over Year 2 $
Interest payment					
Principal repayment					
Total					

Do not complete item 7 until Schedule 'A' has been completed.

Note: See guide items 8 & 9 for explanation of the treatment of capital expenditures and of financing payments respectively.

Item 7. Operating Costs (See Guide Item 7)

			column 1	column 2	column 3	column 4	column 5
		Description	Year 1 $	Year 2 $	Projected Year $	Change Year 2 over Year 1	Change Projected Year over Year 2
a		Resident supers and caretakers salary excluding any unpaid portion of the market rent of the unit(s) occupied.					
b		Unpaid portion of market rent of units occupied by staff					
c		Insurance					
d		Heating (state fuel type ____________)					
e		Hydro					
f		Water					
g		Municipal taxes					
h		Management and administrative overhead Note: up to 5% of total revenue (item 6, line i)					
i		Interest and bank charges					
j		Bad Debts (less recovery)					
k	Maintenance	Painting & decorating (ensuite & minor)					
l		Cleaning & janitorial					
m		Elevator maintenance					
n		Plumbing, heating & electrical repairs					
o		General building maintenance					
p		Snow removal					
q		Grounds keeping					
r							
s							
t							
u							
v							
w							
x							
y							
		Totals ⬍					

Invoices: Sort invoices into the categories shown above for the 12 month period corresponding to Year 2 and provide a summary total for each category.

Note: Are operating costs, relative to a commercial area, included in the above amounts? ☐ Yes ☐ No
If so specify the basis upon which the operating costs are, or should be, apportioned between residential and commercial areas.

Appendix C

Interpretation Guidelines Published by the Residential Tenancy Commission

Procedural Guidelines

P-1: Hearing before the Commission

P-2: Appeals

P-3: Conflict of Interest Guidelines

P-4: Public Access to Commission Files

P-5: Pre-Hearing Disclosure of Evidence by the Parties

P-6: Enforcement of Commission Orders (Section 129)

P-7: Applications to Consider Exemption from Rent Review

P-8: Acceptance of Benefits by Residential Tenancy Commissioners and Staff

P-9: Participation in Political Activity

P-10: Closing a Hearing — How to Deal with "After-Acquired Evidence"

P-11: Appeal Options Available to Dissatisfied Parties

P-12: Evidence to be Considered as a Result of Commission's Investigations

P-13: Frivolous or Vexatious Proceedings

P-14: (To Be Issued)

P-15: Whole Building Rent Review where Complex is Subject to an Outstanding Prior Appeal to the Divisional Court

P-16: Staying of Orders Issued by The Residential Tenancy Commission

Rent Review Guidelines

RR-1: Multiple Complexes and Mixed Use Buildings

RR-2: Financing Costs

RR-3: Capital Expenditures

RR-4: Financial Loss

RR-5: Relief of Hardship

RR-6: Apportioning the Total Rent Increase (Suspended by Guideline No. RR-19)

RR-7: Standard of Maintenance & Repair

RR-8: Rent Increases in Excess of Statutory Limit

RR-9: Re-Renting of Unoccupied and Renovated Units

RR-10: Tenant's Dispute of Intended Rent Increase

RR-11: Court-ordered Rent Abatements

RR-12: Exemption of $750 Units

RR-13: Treatment of Illegal Rents in Landlord's Application for Rent Review

RR-14: Educational Institutions

RR-15: Changing Responsibility for the Provision of Services and Facilities

RR-16: To be Issued

RR-17: Cost Correction (also known as Margin Adjustment)

RR-18: Professional and Consultants' Fees

RR-19: The Residential Complexes Financing Costs Restraint Act, 1982

Landlord and Tenant Guidelines

LT-1: Notice of Rent Increase

Appendix D

Operational and Administrative Forms Used by the Residential Tenancy Commission

13001	*Notice of Rent Increase – Form 1
13002	*Landlord's Application – Form 2
13002A	Detailed List of Proposed Rents – Form 2A
13002D&E	Instructions for Completing Form 2A
13003	*Tenant's Application – Form 3
13004	*Application – Form 4
13005	*Notice of Appeal – Form 5
13006	*Statement of Disputed and Additional Facts – Form 6
13010	Cost Revenue Statement – Schedule 'A'
13011	Cost Revenue Statement
13012	Guide to the Cost Revenue Statement
13013	Schedule of Maximum Chargeable Rents
13014	Operating Costs Worksheet
13015	Justification Worksheet
13017	Notice of Hearing (Appeal)

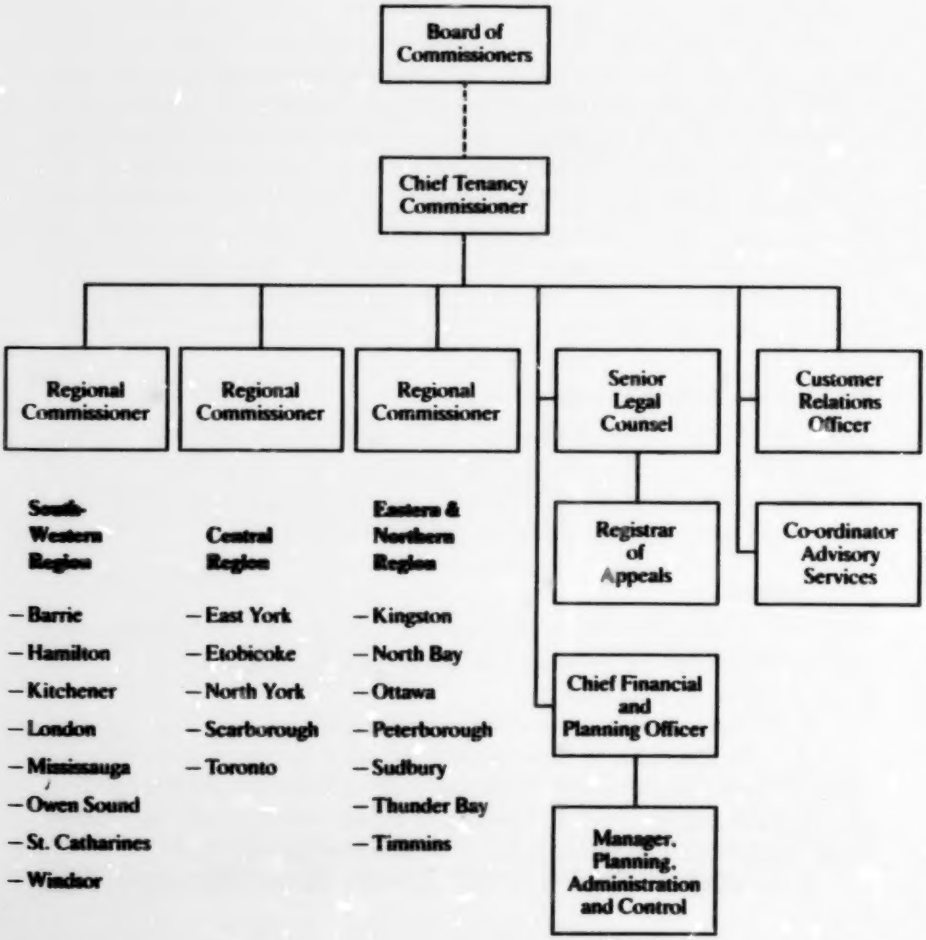
*Prescribed form

13018	Problem Report
13019	Order (Initial Hearing)
13020	Decision (Initial Hearing)
13021	Order (Appeal)
13022	Decision (Appeal)
13023	Agreement
13024	Summons
13025	Rent Review Workload Report
13029	RTC Whole Building Review Hearing Report
13030	RTC Mediation/Hearing Report Tenant Application for Reduction
13031	RTC Mediation/Hearing Report Tenant Application for Rebate
13032	Correspondence Log
13036	Table of Contents Appeal Panel File
13039	Forms Requisition
13040	Appeal Hearing Report
13041	Appeal Hearing Report
13042	Appeal Hearing Report
13051	Application Acknowledgement Letter
13052	Application Acknowledgement Follow-up Letter
13053	Covering Letter — Notice of Hearing
13056	Covering Letter — Notice of Hearing
13057	Information Sheet — A Few Words on Whole Building Review
13058	Information Sheet — To Accompany Whole Building Review Order
13060	List of Units on Appeal

13150	Application Control Register
13151	Application Control Register
13152	Application Control Register
13153	Whole Building Review Pre-Hearing Checklist
13154	Table of Contents — Initial Hearing Record
13155	Table of Contents — Working file
13156	Tenant Application Pre-Hearing Checklist
13157	Appeal Procedure — Checklist
13158	Application Acknowledgement Letter
13159	Record of Inquiries
13160	Request to Inspect File
13163	Notice of Hearing (Initial Hearing)
13164	Summary of Calculations
13165	Record of Inquiries

Appendix E

Organization Chart


Board of Commissioners
Chief Tenancy Commissioner
Regional Commissioner
Regional Commissioner
Regional Commissioner
Senior Legal Counsel
Customer Relations Officer
Registrar of Appeals
Co-ordinator Advisory Services
Chief Financial and Planning Officer
Manager, Planning, Administration and Control
South-Western Region
– Barrie
– Hamilton
– Kitchener
– London
– Mississauga
– Owen Sound
– St. Catharines
– Windsor
Central Region
– East York
– Etobicoke
– North York
– Scarborough
– Toronto
Eastern & Northern Region
– Kingston
– North Bay
– Ottawa
– Peterborough
– Sudbury
– Thunder Bay
– Timmins

Appendix F

Computerized Rent Registry: Implementation Issues

This appendix discusses the various issues involved in the design of a computerized rent registry in Ontario, should such a system be introduced. A specification of the system requirements is outlined, followed by a discussion of several alternatives for fulfilling them. In many cases, the best alternative may depend on how the system is to be ultimately used. Under the assumption that the registry system would be used as described in Chapter 17, an estimate of the hardware and software resources needed, and the total system cost, is presented. Then, some of the other implications of introducing a computerized registry are examined.

F.1 System Requirements

The main function of the rent registry is to record rental information for each particular unit in such a manner that it can be easily retrieved or modified by authorized persons. A computer database to store this information could include the following attributes for each rental unit:

Unit Address

Each rental unit in the system must be searchable by its postal address, with the components of the address searched in the following order: city, street, street number, unit number.

If the system used a standard database package that required each record in the database to have exactly the same information format, the address would have to be stored separately for each unit in the same building, which would require a certain amount of excess memory since the address is the longest piece of information to be included for each unit.

If the database program instead allowed a hierarchical organization, information about the rental units for an entire building or complex could be grouped together so the main building address would be stored only once. The memory requirement for the address component of the registry would then be reduced by perhaps a factor of ten.

Exemption Code

If units that are exempt from rent regulation were to be included in the database, a coded reason for the exemption could be entered. For exempted units, the information listed below would not be needed.

Rent Base

This attribute would provide a rent base for the unit which would be valid at the time of entry. Depending on the frequency of updating the registry, the rent base would either reflect actual rent at all times, or it would simply be the last rent known to be correct (e.g. after the last rent review order), with the possibility that subsequent changes had occurred. The two methods of recording and updating the rent base are described in a later section.

In either case, only one value is required and not an entire history of current and past rents. The space needed to store such information would be prohibitive and the usefulness of the information is questionable except for statistical purposes.

Anniversary Date

This field would indicate when the rent for the unit could legally be increased.

Services and Facilities

Services and facilities included in the above rent base would be listed here in a format that was coded to save memory space. This information would be necessary in order to prevent "hidden" rent increases due to the discontinuance of services previously included in the monthly rent.

Separate Charges

This part of the record would contain all the services for which the tenant pays the landlord separately (e.g. parking and cable television). The charge for each service would be included.

Pending Review Order

This is a special field which would indicate that the allowed legal rent that was present in the database may be misleading because an application for a rent change had been made and was still pending a final decision by the Commission, which might result in a retroactive rent increase.

As well as the ability to store and retrieve the above information, a computerized rent registry must have the following additional characteristics:

1. Accuracy is very important in the system; if an incorrect rent was entered, it could remain invalid indefinitely. Therefore, there should be an adequate validation mechanism for the data input; for example, the system might require that each entry be typed twice, only inserting the information if both entries were the same.

2. Update access should be given only to authorized personnel. Since the main use of the system would ultimately be for answering inquiries, the input and retrieval accesses should be separated so as to deny input privileges when only retrieval was being done.

3. The time needed to search the database must be tolerable given the method of relaying the information back to the person requesting it. For example, if rental information was to be given over the telephone rather than by mail, there would be a greater emphasis on immediate computer response time.

4. The system should be capable of generating statistical information concerning the rental market in Ontario.

5. The transfer of units from the regulated to the unregulated sector because of the ceiling on regulated unit rents should be done automatically by a special program in the system.

6. Since separate charges would be listed separately, the system should automatically add up the legal amounts of the charges so that a total rent was also available when the query was made. This information would be needed to determine when a unit becomes deregulated, since the rent ceiling is applied to the total of all charges.

F.2 Alternatives

There are many ways in which a central, computerized rent registry system could be implemented. In view of the system requirements outlined above, several technical points related to these requirements follow.

Meaning and Use of Rent Base

There are several ways to file and update the rental information in the registry. One method would be to require an ongoing update of all rents in the system, so that the rent provided by the registry was always the actual rent. If this were done when the tenant received a Notice of Rent Increase, the input demand on the system would be spread fairly evenly over the year. At the same time, the system could perform internal checks of the present and previous rents and identify suspected illegalities. However, this method essentially requires, each and every year, almost the entire workload of initial registry setup to be repeated by both landlords and the Commission since every unit would have to be updated.

A more reasonable approach would be to use the schedule rent as defined in Chapter 17. Initially, all rents would be entered with their "anniversary date", that is, the date on which the rent could next be increased. In response to a query, the computer would provide an approximated rent using the base rent adjusted on the assumption that at each opportunity the rent had been raised by the maximum allowable percentage (currently six per cent). Thus, the registry would provide the calculated schedule rent. The only time the rent base would have to be updated would be when an application was made for rent review, at which time the Commission would enter the rent changes (if any) and date into the registry.

The drawback with this system is that it would not always contain the rent being charged for each unit, especially after several years. If a landlord raised the rent by amounts below the statutory increase, it is possible that a subsequent illegal increase would go undetected by the registry. However, if a tenant's rent is increased by more than the statutory increase then that tenant could apply for a rent rebate and a declaration of the lawful rent under section 129.

For the proposed system, the main cost would be the initial setup; thereafter, the system would simply be used for extracting information. Updates due to ordered rent increases could be performed on an ongoing basis at a much lower cost than complete updates.

Given a registry based on a rent entered once only, there must be a method of calculating the current allowable rent. The computer could either update all rents automatically by the statutory percentage on the unit's anniversary date, or it could keep the initial rent stored and perform the calculation each time the database was searched. The second method would be preferable for several reasons. First, there would be far fewer inquiries every year than there are rental units in the province. Estimates based on the experiences of other provinces suggest that no more than one request for every 10,000 units would be received per day. It would not make much sense to use computer resources for updating data that would never be recalled (except for the generation of statistics). Secondly, it takes much less computer time to perform a simple calculation, like multiplying a rent by 1.06 three times, than to access the data in the first place. Therefore, it is better to access it once at the time of the query and adjust it then than to access information every year that may be requested only once every few years. Finally, it would be easier to keep track of a unit's history if it was updated only as a result of decisions by the Commission. If the amount and date were changed every year, it would be hard to follow what had actually happened to the unit in the past.

Included Services and Facilities

The services included in the main rent base would be itemized in this field and stored as a letter code (probably 1 or 2 letters). Some service items, however, might be more conveniently included by default and listed here only if they were not provided. For example, heating and electricity are often included in the basic rent. Thus, they would be indicated in the "Services and Facilities" field only if they were not included. This would save input time and possibly memory space by avoiding the explicit entry of an item that would be common to almost every record.

Separate Charges

Any particular unit may have a list of separate charges for items paid to the landlord by the tenant. However, if space was allocated to each record for the maximum number of separate charges and amounts, a great deal of memory could be wasted since it is expected that there would commonly be one such charge (parking), occasionally two, but seldom three or more.

It is suggested here that space be reserved for two separate charges per unit, with an extra field included to signify that there were more than two. The additional charges could be listed in another record for that unit address.

Exempt Rental Units

It has been previously mentioned that an "exemption code" should be available to identify rental units that are not subject to rent review. Leaving these units out entirely might result in confusion when a query was made for a unit that was not found on the system. It would be unclear whether the unit was exempt or whether the landlord had failed to register the unit. This would likely result in undue harassment of the landlords of unregulated units. Also, statistics on the number and location of exempt units might be helpful for housing studies.

The reason for the exemption should also be stored because the person requesting information may want to verify that the exemption is legal. A short letter code would be sufficient since there are only seven exemption categories. If a unit fell into more than one exemption category, only one code would be needed.

System Configuration

Although the registry has been referred to as "central", there is no reason for all of the information to reside in one central computer. It may be more reasonable for each of the Commission's offices to have a registry of the rental information for buildings within its own region. This decision is vital to the design, use and cost of the computer system.

There are three possibilities. The first is to have a large computer at some central location with the entire registry resident on it. Each Commission office could have a terminal for accessing the computer, and hence the entire database could be searched. Thus, queries about registered rents could be answered by calling any field office. The other advantage to this system is that statistics about the rental market could be generated from a central system quite easily. There are, however, several disadvantages: for example, there might be enough queries across the province in any one day to load down one computer system intolerably. Moreover, there would be substantial long distance connect charges from remote offices to the central computer.

A second possibility is to have a "distributed" system. Each office would have access only to the rental information for buildings within its region. A person making an inquiry would have to call the appropriate office, thereby reducing the Commission's long distance charges. It is expected that most registry queries would be local. Another possibility would be to allow inquiries to be made to any office, with the stipulation that there would be a delay in obtaining information from another region, since the information would have to be telephoned or mailed to the local office.

The distributed alternative completely eliminates the need for a large, expensive computer and long distance connections. Furthermore, the response time of the system in one region would not be affected by the load in other regions. In light of the maximum number of rental units in any one region and the volume of inquiries expected (see approximations in the next section), it would be possible for each office to store and access its local registry on a microcomputer. The microcomputer could be used for other functions as well as the registry; some examples are discussed later. Standard software packages with very few, if any, modifications, would probably be sufficient for the registry application. The same system should be used for each office, so that any custom software that was necessary could be used on all the systems.

The distributed alternative, however, might make the gathering of statistics more difficult. But this is not expected to be a serious problem because each office could produce summary statistics once a year and send them to one location for compilation.

Another problem is that units on the border of two regions might be registered with the wrong office. Care must be taken to define the borders precisely to avoid duplicating or omitting any unit.

The main disadvantage of having a terminal or microcomputer in every office would be the cost of staffing. It is likely that a new person would have to be hired for each of the twenty field offices to process queries and to update the registry.

The third alternative would be a system that combined the advantages of the central and distributed systems. Rather than have a computer in every field office, the offices could be grouped together with one computer or terminal for each group of offices. A suggested grouping would be to use the existing three regional offices (Central Region, South-Western Region, Eastern and Northern Region). Inquiries would have to be made to the proper regional office, utilizing the existing toll-free lines.

A detailed cost study is needed in order to compare the three alternatives.

Software

The rent registry could probably be implemented using a commercially available data management program without modification. Standard programs allow information to be stored in a database and retrieved according to a format defined by the user. The questions the user is asked when making a query can also be designed and implemented with ease. Standard software has other advantages: it is less expensive, more people are familiar with it, and it is less likely to contain errors than a custom-designed program.

If, on the other hand, the registry has any special requirements, it might be better to design custom software. For example, records could be grouped by building, using a different record format for each building since the size of the "services" field could vary. Buildings in which all units were exempt from regulation would need no rent specific information.

One special quality of the registry database is its sheer size. It takes time to search for a particular record, and the more records there are, the longer it takes. A database program that works quite well with 2000 records may be incapable of managing the registry, which would contain over one million rental units.

Means of Access to Public

Since privacy of rental information is essential, the method of answering registry queries must be considered. Telephone responses would leave the information open to anyone who wanted it, while mailed responses could ensure that only the tenant, or a prospective tenant if the unit were for rent, had access to the registered rent. However, it is likely that a prospective buyer would want to check the registered rents for an entire building before purchasing it, to see if there was any possibility of liability for illegal rents charged by a previous owner.

No matter which access rules are applied, the computer system proposed here is expected to be able to handle the demand for information. The number of telephone queries received at each office should be few enough that they can be answered without delay (see numerical estimates in the next section). If a written response is to be given, the computer could be set up to generate a hard copy of the information to be mailed, thus cutting down on staff time.

Monitoring and Enforcement

The ability to monitor rent increases and enforce guideline rates depends on exactly what information is to be stored in the registry. If rents were updated yearly, the computer system could perform internal checks on the actual changes and identify illegal increases. With the system proposed here, however, no such monitoring would be possible and only a tenant's request or landlord's application for rent increase would reveal such cases. Periodic checks could be performed by the Commission, for example, by examining the rents in newspaper advertisements as is done in Nova Scotia.

Changes to the System

An important aspect of a registry system is that it must be flexible enough to cope with minor changes in legislation. For example, if the statutory increase were changed, the program that approximates lawful rents would have to be altered. Or, if the ceiling on rents in the regulated sector were changed, the exemption status of certain units would have to be changed.

F.3 Quantitative Approximations

This section estimates quantitative information for a computerized rent registry in Ontario and suggests a general hardware configuration. In all cases, an attempt has been made to allow for a greater capacity than is actually expected, and the costs given in the next section should be an upper limit. If any of the assumptions are unjustified, the calculations should be changed accordingly.

To estimate the total size of the database, it has been assumed here that all units would occupy separate, fixed-size records. In the implementation, space could be saved by using a hierarchical structure and having variable records. Therefore, this should be a maximum memory requirement.

The following information is needed on each unit:

Address	50 bytes
City (20)	
Street (20)	
Street number (5)	
Unit number (5)	
Exemption code	1 byte
Rent base	7 bytes
Anniversary date	6 bytes
Services and facilities	10 bytes
Separate charges:	
Service 1:	1 byte
Charge 1:	6 bytes
Service 2:	1 byte
Charge 2:	6 bytes
More services (Y/N)	1 byte
Pending review order	6 bytes
Total per record	95 bytes

Note that a "byte" is the amount of memory needed to store one character. (Some computers can only manipulate information in groups of two or four bytes, so the numbers above may increase depending on the computer used.) Unit address has been given fifty characters, although some standard government computer forms use only thirty. Dates in day/month/year form require six characters, so for the "Pending review order" field, an actual application date has been allowed for, not just a true/false indicator. Coded items such as services and the exemption code have been allowed 1 character each, since over 100 unique characters are recognized by any computer (upper and lower case alphabet, etc.). Finally, space for dollar amounts has been allowed so that a rent base can be set up to $9999.99 and separate charges can reach $999.99.

The number of rental units in Ontario, both regulated and unregulated, is about 1,100,000 (Census Canada 1981). Based on these figures, the total size of the registry database would be no more than about 105 megabytes.

A rough cost analysis has been performed on two different system configurations, one with a microcomputer in every office which manages a small registry database, and one with a larger computer in each of the three regional offices. The second configuration was dramatically cheaper because it reduced the major annual cost, which was staff time. Cost estimates are given in the next section for the three-computer alternative.

To estimate the expected number of queries for registry information, the experiences of the systems in British Columbia and Nova Scotia were examined. It is assumed that telephone access would be provided via the existing toll-free lines. If access were by mail instead, there would be additional staff time for preparing mail, but fewer queries would be received.

Scaling up the values from the other provinces by the ratio in total number of regulated units suggests that Ontario would experience from 60 to 200 queries per day across the province. However, the values may be greater due to the existence of more tenants' associations in large urban areas such as Metropolitan Toronto. If the system is efficient, this may encourage people to use it more (Nova Scotia has a manual, not a computerized system). A reasonable maximum for the province may be 500 queries in any day. At a capacity of 10 queries per hour per operator (reasonable, since each call is a simple probe for information), it would take 7 operators in total. Since this is a peak amount only, this report will instead assume a total of 6 operators for answering queries, two per regional office. At peak times, other staff could fill in. A cost per operator of $17,000 annually has been assumed for the new staff members.

As well as the telephone queries, there are updates to be made to the database due to landlord applications for rent reviews and the ensuing orders. These are estimated to average about 14 per day based on the 1982/83 application volume. Since there are about 30 units per building on average (for buildings involved in applications), this amounts to about 400 units. The updates should be done on a regular basis, but should not interfere with the operation of the registry. An additional operator would be required for each of the regional offices for database updates and for queries during peak times. Since three operators would be needed, the system must be capable of a three-terminal configuration.

The last approximation that was made involves the initial registry setup. For the entire database to be typed and validated, almost 20,000 typist-hours are needed. An hourly rate of $7 has been allotted for the initial input. The possibility of requiring landlords to fill out special coding forms which can be interpreted directly by an automated input device should also be investigated.

F.4 System Resource and Cost Estimates

Assuming that a multi-user microcomputer is to be set up in each of the three regional offices, each computer would be required to store and access 35 Megabytes of information (calculated as 95 bytes/record times 1,100,000 records, divided equally between the three offices).

The following costs represent rough estimates using rounded numbers; they depend on the actual equipment purchased and the timing of the implementation. Prices between different manufacturers can vary dramatically, and technological change can cause rapid price decreases within a period of several months. Although a feasibility study would be needed to determine the ideal configuration and cost, these numbers should provide an indication of the order of magnitude of initial and annual costs.

In the following configuration a printer was added for convenience, and communications capability was included so that if it is ever necessary, each office can communicate with the other offices' computers.

Initial Costs

System Purchase:

- Microcomputer
- at least 512 kbytes of main memory
- floppy disk drive
- 35-40 Megabytes of Hard Disk with tape backup
- dot matrix printer
- modem
- asynchronous communications
- standard software:
  - operating system
  - database program
  - communications program
- additional terminals

Total System Cost: $ 50,000	
For Province:	$150,000
Personnel Costs:	
Initial information entry and validation	
Typing costs @ 60 records per hour:	$130,000
Software Costs:	
Custom Programming	$100,000
Total Initial Purchase and Setup:	$380,000

Annual Costs

Yearly Maintenance and Supplies	$ 30,000
Yearly Personnel Costs:	
(9 operators @ $17,000)	$153,000
Total Annual Cost:	$183,000

A manual registry was not explicitly considered for this report. It would probably be more expensive than the computerized system, as personnel requirements are likely to increase. Although there would be no initial equipment expenditure, setting up a manual filing system would require more staff time and is more prone to error (misfiling) than a computer system. Manual accessing of registry information would be more time-consuming, since the information must be located, and then a manual calculation performed to produce the allowable rent. The statistical component is completely infeasible with a manual system.

F.5 Other Implications of Introducing a Rent Registry

One probable effect that the introduction of the registry system would produce is an increase in the number of landlords applying to rent review for increases. This is because some landlords might apply for review when they would otherwise have increased rents illegally. Estimates of the prevalence of illegal rents have been made by various people; one such estimate made by the Federation of Metro Tenants' Associations is that 70-75000 units annually have their rents increased by more than six per cent, especially when new tenants move in. It is impossible to say whether this estimate is accurate or how many landlords would have applied for whole building review since the 1979 Act came into force, if the rent registry provisions had been proclaimed in force. Commission data indicate that over the past few years even landlords applying for whole building review have had their Year 2 rents adjusted downward, in about ten per cent of all applications.

No attempt has been made here to estimate the cost of enforcement.

F.6 Other Uses of Computer System

Cost estimates given in this appendix are for a computer with a capacity suitable for providing the registry function alone. The possiblity of using computers for additional purposes should be considered in choosing the most appropriate system for the Commission.

One application of computers to Commission needs is as an aid to the cost-revenue calculations which must be made whenever a landlord applies for whole building review. This possibility is examined in Appendix G.

Even if cost-revenue calculations were not performed on the computer, the summary of intermediate calculations may be stored in a database. The Commission currently produces an annual Report to the Minister, which includes a statistical study of the sources of allowed increases. The tables included therein are generated by computer from a large database which contains a summary of costs and revenues for each whole building review. If this database were available on owned computer systems, there may be a cost savings realized by eliminating the need for timesharing on a larger machine.

It may be possible to effectively integrate all three of the computer applications discussed in this section. The registry would contain the information previously described for each unit. For buildings going to rent review, a more detailed breakdown of costs and revenues would be stored for the purposes of the annual report, perhaps after being entered into the cost-revenue program to perform or check the calculations. If a list of ordered rents is generated by computer, it could automatically be recorded into the registry. The ability to combine these programs should be examined further, since substantial programming may be involved and the memory estimates given in this report must be updated to include the additional data.

Appendix G

Computer Aids to Cost-Revenue Calculations

This appendix investigates ways in which the use of computers may aid Commissioners in performing Cost-Revenue calculations and preparing orders. While a Commissioner's experience and discretion are needed to determine which costs a landlord can legally use for cost pass-through purposes, certain parts of the calculation are easily computerized and could serve as a check to a Commissioner's calculations.

Several reasons for using computers for this application follow:

1. They may help to shorten the delays in preparing and issuing orders. In fiscal year 1982/83, this delay averaged 35 days per application.

2. Since the same computer programs would be used in all offices and by all Commissioners, greater standardization could be achieved if it were deemed desirable.

3. Any changes in the Act or the Guidelines that were made binding could be directly incorporated into the computer programs, thus ensuring that the change would be applied consistently and simultaneously by all Commissioners and offices.

G.1 Features That Could Be Computerized

Although the details would have to be determined by the Commission, it appears that a suitable programming package could be constructed to aid in many steps of the Cost-Revenue calculations. Such a software package might include the following features:

1. *An interactive program, which would allow all the information submitted on the Cost-Revenue Statement to be keyed in and stored.* At the very least,

this could be used to keep records and provide statistics. Moreover, once the completed and approved information had been entered, a computer program could make adjustments to the submitted costs and perform the cost-revenue calculations.

2. *Several databases that would be useful to Commissioners in deciding whether the information submitted was reasonable.* One example is a database of common capital expenditure items and their useful lives (i.e. the table in Interpretation Guidelines RR-3, Appendix A). Submitted capital expenditures could be compared to this database. If necessary, items could be added to the database as they were dealt with by Commissioners so that subsequent decisions about useful life periods could be made consistently.

Another kind of information that could be stored would be a history of prevailing mortgage rates, so that submitted rates could be examined for reasonableness.

3. *Certain sub-programs that would aid in specific parts of the calculation, even if the main calculation was to be done manually.* For example, it might be helpful to have software that converts various financing payment schemes to the blended payment method using "generally prevailing interest rates and conditions".

The financial loss allowance may be the most complicated component of the rent increase calculation. It may include adjustments for both cost corrections and capital expenditures allowed in previous reviews as well as Year 2 costs and revenues. Moreover, this calculation may be further complicated by the restrictions placed on financial losses that arise solely from the purchase of a building. Losses may be spread over a period of years and, at the same time, an upper limit on the allowable amount of loss may be in effect (e.g. Bill 198). Therefore, if a computer system was implemented to aid in these calculations, a separate module dealing entirely with financial loss might be desirable.

One very tedious job for large building calculations is preparing the schedule of ordered rents. This involves taking the proposed rent schedule, calculating the total of the rents, taking the lesser of the total proposed and allowable rent increases, and multiplying each existing or proposed rent by some factor to produce a list of ordered rents. This final schedule could be produced by a computer.

4. *Preparation of reports and summaries.* Several types of reports could be generated using the computer. If the entire calculation was to be performed on the computer, then all intermediate steps could be output in a standard format as part of the order. For example, this output could follow the format of the "Justification Worksheet" currently used by the Commission. The

schedule of ordered rents could also be produced by the computer as described above.

G.2 Suggested Program Format

The program to be developed could reproduce, perhaps as a check, all of the cost-revenue calculations involved in making an order. The Inquiry has prepared a simulation model that performs these annual calculations over a period of several years for a particular building.

A similar program could easily be modified to incorporate additional features which, for example, produce a schedule of ordered rents and allow for discretionary adjustments based on standards of maintenance and repair. After verifying the information presented in the Cost-Revenue Statement and associated schedules, a Commissioner could type in this information (using an interactive program that asks for certain other facts such as cost corrections, adjustment for maintenance and write-off period for financial loss). The program would then proceed to prepare the order. This order would have to be examined to determine if any special considerations were called for, and the process could be repeated if necessary. A brief description of the program's operation is given below:

From Item 7 on the Cost-Revenue Statement, the total operating costs for Year 1, Year 2 and the Projected Year would be calculated, as would the differences between years (the difference between Years 1 and 2 would be produced for reasons of comparison). Certain checks could be made here: for example, to ensure that management costs equal 5 per cent of the total revenue given in the Statement.

From Item 8, any capital expenditures would be amortized over their useful life using either the financing rate given on the statement, or some current reasonable rate. The total capital expenditure allowance to be given for the Projected Year would be calculated.

Item 9 would be used to calculate Projected and Year 2 financing costs, perhaps after some adjustment to convert payments to the blended payment method. The debt/equity ratio would be calculated and, if too high, the allowed financial loss may be scaled down. If "Acquisition date" indicated a sale just before the application, then this information would be used to affect the financial loss calculation and to decide whether changes in financing costs were to be allowed.

The financial loss and relief of hardship calculations would be performed by applying all rules currently in effect, after the program asks several questions, such as whether there had been two or more sales in a short period of time, whether a financial loss from a previous review remains to be allowed, etc. The justified increase would then be totalled from all of the above intermediate calculations.

Item 6 on the Statement gives the Year 2 rent revenue, which would be used along with the result of the justified increase calculation in order to determine the adjustment factor to be applied to existing or proposed rents when the order is prepared. From the existing and proposed rent schedule (Form 2A), a new schedule of ordered rents would be calculated. All steps of the above calculations would be produced on a standard form.

G.3 Hardware

Several different hardware configurations could be used to facilitate computer access. One possibility would be to have a large, central system that could be accessed from each Commission office via a terminal and modem connection. Alternatively, one or more microcomputers could be available at each Commission office.

With a central system, there is more information at the disposal of the Commissioner regarding past applications. Moreover, it is easier to generate province-wide statistics if all of the data are in one place. However, a centralized system requires a more complicated communications network, and ease of access by one office may depend on the load put on the system by other offices. In addition, loss of communication or system problems may be disastrous, whereas with a decentralized system local problems do not affect other offices. Furthermore, large systems tend to be more expensive to purchase and maintain.

There is no inherent need for interaction between offices in performing cost-revenue calculations; this is largely an independent function of the individual office or Commissioner. Therefore, it would probably be most convenient to use microcomputers at some or all of the offices to run the Cost-Revenue programs. However, this decision would depend on the need to use the same computer system for other functions as well, such as a rent registry. If two applications were to be introduced at the same time, a study would be needed to determine the optimal arrangement for computer access.

If independent systems were employed, it might be advantageous to have portable computers that could actually be carried to hearings so that Commissioners could perform on-location calculations. The Cost-Revenue program would be simple enough that a very small computer would suffice. The record-keeping function could then be provided by re-keying the information into a stationary computer, or by directly transferring it over a communications link. Information could also be taken on a floppy disk to a single location to be transferred onto a mass storage medium (i.e. hard disk).

G.4 Other Considerations

If a complete Cost-Revenue software package is implemented as discussed in this appendix, there are several other factors to consider regarding the use of such a package.

First, all software must be updated immediately if there is any change in the legislation or Interpretation Guidelines. If changes that affect the actual calculations occur often, it may be expensive and time-consuming to continually alter the programs. One solution to this problem would be to make the program flexible enough to allow for some legislative changes without actually altering the program. For instance, a list of standard default numbers and percentages could be kept in a separate file that was accessed by the program. The values would not be changed very often, but could be easily changed by a non-programmer (e.g. a Commissioner) by editing the default file. Examples of these constants are: maximum allowable debt/equity ratio, number of years for financial loss writeoff, and relief of hardship rate allowed. This method was used in programming the simulation model mentioned previously, so that the effects of changes in legislation could be examined.

An alternative would be to allow modifications to be made as the program was run. On invoking the program, the defaults being used could be displayed in turn with an opportunity to change them. This would also allow for "discretion" to a limited extent; for example, if the financial loss is normally phased in over a period of five years, and for some reason a Commissioner decided that a period of three years was more reasonable, the change to "standard" procedure could be made while executing the program.

A second consideration is the use of the information after the order has been issued. It would probably be useful to keep the final application and order in a permanent computer database, so that it served as a record in case the landlord should come to rent review again (in which case the old record is needed for margin adjustments, capital expenditure adjustments, to examine previously allowed financing costs and loss, etc. and for implementing the base year review approach recommended in Chapter 11 of the Report). Of course, many of the old reviews would still be in paper files if they were performed before the introduction of the computer system. However, normally only the review in the directly preceding year must be examined in determining adjustments, so that after a year or two the computer may contain all of the required information.

Since the Commission currently stores all information related to whole building review applications on a computer database (by timesharing on an outside system), the possibility of storing the database locally should be examined. The database is currently used to generate statistics for the Commission's annual Report to the Minister. Since these statistics can be generated using conventional database programs such as those available for microcomputers, expensive timesharing costs could be eliminated while keeping all of the capabilities of the larger database. The only difference expected would be that each office might keep its own records rather than store everything on a central system, so that summary statistics would have to be compiled from reports given by each office. A study of the storage space needed for the database would be required before the whole database is moved from a large system, because the Commission keeps information other than whole building review applications on the system — for example, appeal hearings, tenant applications, and inquiry statistics. The sheer volume of information may make the database function unworkable without a large computer.

G.5 Cost Estimates for Suggested Configuration

Storage Estimates for Database Function

The major portion of the Commission's database consists of a record for each whole building review application. Each record consists of 50 attributes of information (such as address, dates, Commissioner, and all dollar values going into the rent increase calculation), which make a total of approximately 400 bytes (characters) of information. This was estimated by looking at a list of attributes and their maximum sizes. This number may be reduced, since some currently stored attributes are simple arithmetic derivations of others.

In the past, for a single year there have been anywhere from under 1000 to just over 4000 records in the whole building review database. Assuming an upper limit of 10,000 whole building review applications in a year, this represents 4 Megabytes of information — certainly small enough for a microcomputer with a hard disk to store and manipulate. However, the whole building review portion of the database is but one of perhaps 15 different information types stored. Still, assuming a total of even 50 Megabytes of information is generated (the whole building review data are the most detailed), one or more microcomputers with hard disk storage should be sufficient.

Hardware Needed for Cost-Revenue Calculations

It is suggested that one portable microcomputer be purchased for each office initially. It should be capable of communication with other computers, and a built-in modem would be helpful. Temporary data from calculations can be stored on floppy disks, so two disk drives should be available.

A portable computer with all of the necessary options for the Cost-

Revenue function would typically be $3500-$4000. Stationary storage should also be purchased for holding the database if it is to be included in the system.

Software Costs

The database function could probably be handled by standard available software packages without modification. Such packages are usually well under $1,000 in cost. They will also require an operating system for the machine being used. The programs required for the cost-revenue calculations, however, are custom-designed and programming fees may reach $50,000.

Total Cost for Province:	Portable Computers	$ 80,000
	Mass Storage	$ 15,000
	Software	65,000
	Total	$160,000

This is a very rough estimate and assumes no particular brand of equipment.

Appendix H

Witnesses Who Appeared before the Inquiry

Douglas Aitcheson
Phyllis Akler
Niculae (Nick) Amarica
John Andrade
Robert David Arsenault
Nancy Ayotte
Jose Luis Baptista
Gerry Bauer
Marcel Beaubien
Fred Bever
Michael Bossin
Don Boudria, M.P.P.
Robert Burton
Pat Capponi
Michael Cassidy, M.P.P.
Maija Ceming
Parduman Parkash Chadha
Brian Charlton, M.P.P.
Dominic Chiocchio
Frances A. Coates
Karen Cohl
Sean Conway, M.P.P.
Sheila Copps, M.P.P.
David Craig
Nazla Dane
Penny Dickenson
Carolyn Dodds
Robert G. Doumani
Joyce Duffield
Will Dunning
Gail Edmunds
Herb Epp, M.P.P.
Robert Eyer
Richard Fink
Susan Fish, M.P.P.
Bill Foster
Mike Foster
Reverend Eilert Frerichs
Craig Fulton
Helen Galbraith
Katherine Gardner
Jack Garson
Catherine Glen
Sean Goetz-Gadon
James Goss
Tony Grande, M.P.P.
Mary Hogan
Richard James
Anne Johnston
Margaret Johnson
Richard F. Johnston, M.P.P.
Moira Jubinville
Ron Kanter
Ron Kellestine

Graham Ralph Kidlark
Marlene Koehler
William Krehm
Bruno Kuhlmann
Joan Kuyek
John Lang
Claude Latremouille
Jack Layton
Sidney Leibovitch
David Garth Leitch
Alan Levy
Mario Liberty
Joseph Locke
Ian Macdonald
Kenneth John MacDonald
Elinor Mahoney
Ron Manchee
Sharan Mathieu
Janet McClain
Donald Marshall McCurdy
Dr. Anthony L. MacFarlane
Daniel McIntyre
John McKean
Alan McLeod
Sarah Metrick
Professor John R. Miron
Helena Mitchell
Mrs. Moore
Karel Moravec
Paul Murphy
Ralph Nash
Bernard Nayman
Ben Nobleman
Lee Ann Northcote
Kathleen J. O'Brien
Mark Stuart Osborne
Jeffrey Patterson
John Pavey
Joe Peters
Sarah Peters
David R. Peterson, M.P.P.
Ed Philip, M.P.P.
Jack Pollock
James Potts
Burns Proudfoot
Robert Keith Rae, M.P.P.
Paul H. Reinhardt
James Renwick, M.P.P.
Anne Richman
Leslie Robinson
David Rotenberg, M.P.P.
Jim Rowcliffe
Albert J. Roy, M.P.P.
Hiam Rudler
Alfonso Ruggero
Tony Ruprecht, M.P.P.
Italo Sera
Shalom Schachter
Pauline Shapero
David M. Shoesmith
Yuri Shymko, M.P.P.
Professor Lawrence Berk Smith
John Spence
Alexander Szekeres
Glenn Stansbury
Jan Stevens
Louise Stratford
Betty Strong
Melvin L. Swart, M.P.P.
Murray Tate
David Thornley
Kenneth J. Timney
Mark William Tooker
Thomas Trottier
Fred E. Vance
Margaret Vago
Maynard Viinalass
Rudi R. Vogel
George Vosper
John Whitelaw
Phillip Charles Williams
Guy Wright
Bill Wrye, M.P.P.
Gary W. Zinck

Appendix I

Persons and Organizations That Submitted Briefs to the Inquiry

- G. Douglas & Thelma Aitcheson
- Phyllis Akler
- Ariadne Group 440556 Ontario Limited
  - Edward J. Waitzer
  - Joseph Berman
- Avenue Plaza Tenants Association
  - Kenneth D. Ryan
- 265 Balliol Street Tenants Association
  - Penny Dickenson
- 657 Balliol Street Tenants' Association
  - Kathleen J. O'Brien
- Bathurst-Eglinton Tenants' Association
  - Katherine Gardner
- 1840 Bathurst Street Tenants' Association
  - Carolyn Dodds
- Bayshore Tenants Association
  - Daniel McIntyre
- Sagar Bhardwaj
- Don Boudria, M.P.P.
- Bretton Place Tenants' Association
  - Grant M. Hall
- Olga Bugiel
- Canadian Bar Association — Ontario
  - Robert G. Doumani
- Canadian Federation of Students — Ontario
  - Helena Mitchell
- Michael Cassidy, M.P.P.

Cawthra-Mulock Tenants Association of 105 Isabella Street &
  100 Gloucester Street
  Helen I. Galbraith
Stanley Cerisano Limited
Jan Chaldron
Champlain Towers Tenants Association
  W. Foster
Dominic Chiocchio
City of Ottawa — Energy Action Plan Process
  Evelyn Gigantes
City of Toronto — Department of the City Clerk
  Roy V. Henderson
Ad hoc Committee of Tenants
  Doug Draper
Community Legal Services — Ottawa-Carleton
  Niculae A. Amarica
Committee of Concern for Rental Housing
  Julius Melnitzer
Continental Tower Tenants' Association
  Ralph H. Sarson
Sean Conway, M.P.P.
Sheila Copps, M.P.P.
Deer Park Residents' Association
  Jane Hughes
  Howard Joy
  M.A. Richardson
Edward Morris DeWitt
1055 Don Mills Road — Tenants
  John McGough
49 Dundonald Street Tenants' Association
  Sarah Peters
Stewart East
Engineering Interface Limited
  Ian A. Jarvis
Herb Epp, M.P.P.
Federation of Ottawa-Carleton Tenants Associations
  Tom A. Trottier
Fink and Bornstein
  Richard A. Fink
Honourable Susan Fish, M.P.P.
Flemingdon Community Legal Services
  John McKean

Franklin Apartments
  Don Barratt
Grandview Association of Tenants
  Kenneth Engmann
Guelph & District Apartment Owners Association
  Denzil Williams
Halam Park Development Limited and Janus Apartments Limited
  Robert Burton
Hamilton Wentworth Renters Network
  Mark Osborne
  James G. Wells
Hampton House Tenants Association and Rosedale East Tenants Association
  Raymond Stancer
Hayward & Poyser
  R.P. Hayward
  C.W. Poyser
Homestead Land Holdings Limited
  G.H. Sellar
I N A Financial Services, Inc.
  Jose Luis Baptista
108 Isabella Tenants Association
  Elinor Mahoney
Richard James
Anne Johnston
Ron Kanter
Jean Kanty
Graham R. Kidlark
Kingston Rental Property Owners Association
  Howard R. Shaw
John Lang Appraisals Limited
Claude Latremouille
Law Union of Ontario
  Jack Gemmell
  Paul Reinhardt
W.H. Lavery
Jack G. Layton
London and St. Thomas Real Estate Board
  J.M. Rowcliffe
Remo Mancini, M.P.P.
Manor Gardens Tenants Association
  Gary W. Zinck

Maple Lake Park Tenants Association
  Frances A. Coates
Alan McLeod
McMaster University Tenants Association
  Anthony L. MacFarlane, M.D.
McQuesten Legal & Community Services, Association of
  South-West Legal Clinics
  David Craig
Sarah Metrick
Minto Tenants Association, Parkwood Hills and
  Navaho Place Tenants Association
  Sharan Mathieu
  Sherrill Burns
Karel Moravec
Multiple Dwelling Standards Association
  Jan Schwartz
Niagara Region Landlords Association
  George Cottage
Ben Nobleman
Northgate Tenants Association
  Jack Garson
  Melissa Klein
  Maria Senyk
  Mark Tooker
117 Old Forest Hill Road
  Margot Clark
  Nazla Dane
  Gertrude Templeton
Ontario Landlords' Association
  David M. Shoesmith
Ontario Real Estate Association
O'Shanter Development Company
  William Krehm
Parkway Forest Tenants' Association
  Moira Jubinville
John H. Pavey
Peterborough and District Landlords Association
  D. Cooper
Joe Peters
David R. Peterson, M.P.P.
Steve Plestina
Burns Proudfoot

Robert K. Rae, M.P.P.
Kenneth A. Roberts
Rosebury Square Tenants Association
  Shalom Schachter
David Rotenberg, M.P.P.
Albert J. Roy, M.P.P.
Tony Ruprecht, M.P.P.
St. Andrews Towers Tenants Association
  George H. Young
St. Clair Association of Rental Properties Owners
  R. Brill
Seigniory Tenants Association, The Watergate Tenants Association
  L.-A. Couture
John Sewell
Yuri Shymko, M.P.P.
Small Landlord Action Committee
  Bruno Kuhlmann
Social Planning Council of Metropolitan Toronto
  Jeffrey Patterson
Social Planning Council of Ottawa-Carleton
  Jim Goss
  Rod Manchee
John D. Strung
Sudbury Community Legal Clinic
  David G. Leitch
Tenants' Association of 44 Stubbs Avenue
  N.H. Regan
Tenants' Umbrella Group
  Community Legal Aid Services Program
  Flemingdon Community Legal Services
  Tenant Hotline
  Metro Tenants Legal Services
  Parkdale Community Legal Services
  Scarborough Community Legal Services
  Riverdale Socio-Legal Services
  East Toronto Community Legal Services
  Central Toronto Community Legal Services
  Jane-Finch Community Services
  Mississauga Community Legal Services Inc.
  Downtown Legal Services
  Federation of Metropolitan Toronto Tenants' Associations

Two Ambassadors Tenants Association
  Grant Edwin Edwards
University City Tenants Association
Fred E. Vance
V.S.R. Investments
  K & R. Chavali
Waterloo Regional Apartment Management
  Rudi R. Vogel
Webbwood Tenants Association
53/57 Widdicombe Place Tenants' Association
  Eleanor Brown
Samuel Wilkes
Wilson Holdings Partnership
  Harry Houtman
Bill Wrye, M.P.P.